

## Opinion No. 37-1809

November 2, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. F. E. Sieren, Treasurer Curry County Wind Erosion District Clovis, New Mexico

{\*177} This is to acknowledge receipt of your letter of October 30th requesting an interpretation of Chapter 222, Laws of 1937, establishing wind erosion districts. You state that Curry County Wind Erosion District made application for \$ 5000.00 appropriated by Section 21 of the Act, attaching thereto two budgets, one for administrative purposes and one for revolving fund purposes; that you received a check from the Regents of the College of Agriculture and Mechanic Arts with no specification as to any division of the money. You further state that the District has incurred certain administrative expenses and that you are at a loss to know where to secure funds to pay them. You, therefore, desire an interpretation of the financial aspects of the act which, if I understand your inquiry correctly, involves the following: (1) Should the entire grant be covered into the revolving fund? (2) (a) Can a direct grant of monies appropriated by Section 21 be made to the administrative fund? (b) Does the State Board of Finance have power to allocate part of the \$ 5000.00 to the administrative fund? (3) May the District borrow money by anticipating and pledging revenues to be derived from the two-mill levy authorized by Section 12?

(1) The entire grant must be placed in the revolving fund. I think the Act is clear and specific as to this requirement. I respectfully refer you to Sections 17 and 21. Section 17 provides that the Regents of the College of Agriculture and Mechanic Arts shall establish a revolving fund in each wind erosion district out of which payment may be made for the performance of work on lands in the district to meet the requirements of the act. It is further provided that all monies set up for the revolving fund shall be transmitted to the treasurer of the wind erosion district to be covered in such revolving fund "and kept separately and used only in the prosecution of work in furtherance of the objects of the act which the Board of Supervisors are permitted to perform." Section 21, the appropriation section, specifically proscribes the manner in which such funds may be used. The money appropriated and administered by the Regents can only be used to set up revolving funds. I cannot construe these sections other than as a direct mandate by the Legislature that all money appropriated under Section 21 is to be used exclusively for setting up of revolving funds.

(2) (a) No direct grant of any kind can be made by the Regents for administrative purposes. As stated above, it is provided in unmistakable language in the sections above quoted that this money shall be covered into revolving funds and used for limited, specified purposes. It is not within the power of the Regents to divert this money for purposes other than as specified in the act. The law as stated in Corpus Juris is as follows:

{\*178} "Where a special fund is created or set aside by statute for a particular purpose or use, it must be administered and expended in accordance with the statute, and may be applied only to the purpose for which it was created or set aside, and not diverted to any other purpose, or transferred from such authorized fund to any other fund." -- 59 C. J., Sec. 378, p. 232.

(b) The State Board of Finance has no power to allocate any of the \$ 5000.00 grant for administrative purposes. In the first place, the State Board of Finance can only authorize a transfer of funds to state institutions in certain enumerated instances (see Section 112-125, New Mexico Statutes Annotated, 1929 Compilation). In the second place, as stated above, Chapter 222 specifically designates the purpose to which monies directly appropriated for wind erosion districts shall be used. No administrative or executive body can change the terms of the act.

(3) Section 18 gives the district power to pledge its revenues and income and to issue certificates of indebtedness or bonds. However, it is specifically provided that no such obligations shall be paid in whole or in part out of ad valorem taxes. This proscription necessarily includes monies derived from the two-mill levy. In final analysis, it means that certificates of indebtedness and bonds may be issued only for the purpose of carrying out the provisions of the act and not for administrative purposes in view of the fact that all income and revenues, other than those from ad valorem taxes, must be covered into the revolving fund.

If you have a surplus in any of your budget items you may be able to solve your problem by a transfer of funds under the provisions of Section 233, Laws of 1937. In substance it is there provided that a transfer from one budget item to another may be allowed by the State Comptroller with the approval of the State Tax Commission and this office, provided that such a transfer would not have the effect of increasing the budget as a whole. Of course, the transfer would have to be made from funds other than interest, sinking, road or building funds as set out in Section 134-513, New Mexico Statutes Annotated, 1929 Compilation.

I have attempted to clarify the problems which I think your letter presented. If I can be of further assistance I will be glad to advise you.

By: RICHARD E. MANSON,

Asst. Atty. Gen.