

Opinion No. 39-3203

July 6, 1939

BY: FILIO M. SEDILLO, Attorney General

TO: Mr. John B. McManus, Superintendent, New Mexico State Penitentiary, Santa Fe, New Mexico.

{*78} You request an opinion with respect to the proviso contained in Chapter 238, Laws of 1939, page 636, immediately following the appropriations for the State Penitentiary, and which reads:

"Provided, that permission is hereby given to use any balance in penitentiary funds for buildings, furniture, equipment and permanent improvements, at the penitentiary proper or at a penitentiary farm, and the proceeds of convicts' earnings and other funds belonging to the institution are hereby appropriated, but expenditures shall not exceed the estimates of the budget submitted to the Fourteenth Legislature by the Governor."

This proviso in reality has two separate and distinct clauses which should read as if a semicolon or period had been placed after the words "penitentiary farm." These two clauses have appeared in almost identical language but properly and clearly separated in previous Appropriation Acts. By the first clause permission is given to keep all balances remaining at the end of the year from the monies appropriated for the items set out immediately preceding that clause for the other purposes specified.

The practical result of this provision is that such balances do not revert as in the case of other appropriations. Almost identical language has been used in the past for this and some of the other institutions, and this has been the uniform interpretation given to it in the administration of such Appropriation Acts, as I am informed by the office of the State Auditor. The Legislature is presumed to know the interpretation often given to such language, and in the use of the same language is presumed to intend the same result. This fact strengthens my conclusion as to the purpose and meaning of this first clause.

The second clause merely appropriates all other income of the penitentiary in order to comply with the provision of the Constitution that monies may be paid out only upon appropriation; and then limits expenditures therefrom during the year to {*79} the total of the budget submitted for the State Penitentiary by the Governor to the Legislature.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.