

Opinion No. 43-4336

July 14, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. J. D. Hannah, State Auditor, Santa Fe, New Mexico

In your letter dated July 13, 1943, you state that the last session of the Legislature passed an act increasing the salary of the Insurance Commissioner from \$ 3,000 to \$ 4,000.00 but only appropriated \$ 3,000.00 for the salary of such commissioner.

In the budget submitted for the Insurance Department, the salary of the Insurance Commissioner was set up at \$ 4,000.00. You inquire whether it is permissible to pay the Insurance Commissioner the additional salary, in view of the fact that no appropriation was made to take care of the same.

The general appropriation bill provides that \$ 3,000.00 is appropriated for the salary to be paid out of the State General Fund. Senate Bill No. 122, which will appear as Chapter 79, Laws of 1943, provides that the salary of the Superintendent of Insurance shall be \$ 4,000.00 per annum, and further provides that the same shall be paid upon warrants out of the fund known as the "Insurance Fund."

Where the salary of a state officer is fixed by a separate act, and provision is made for its payment out of a particular fund, such an act amounts to a continuing appropriation. *State ex rel Fornoff vs. Sargent*, 18 N.M. 272, 136 P. 602; *State ex rel Chavez v. Sargent*, 18 N.M. 627, 139 P. 144; *Dorman v. Sargent*, 20 N.M. 413, 150 P. 1021.

When two acts are passed at the same session of the Legislature covering the same subject matter, in case of repugnancy, the act taking effect at the later date supersedes the previous act, and under such a rule of statutory construction, Chapter 79, Laws of 1943, would supersede the provision in the appropriation bill relative to the salary of the Superintendent of Insurance. However, when two such acts can be harmonized and construed together, the same should be done. Under such a construction, the salary of the Superintendent of Insurance is declared to be \$ 4,000.00 per annum. The Legislature has appropriated \$ 3,000.00 to be paid out of the State General Fund, which leaves a continuing appropriation of the balance of \$ 1,000.00 which should be paid out of the Insurance Fund, as provided in Chapter 79, Laws of 1943.

It is, therefore, my opinion that by construing the two acts together, the Legislature has made an appropriation of the full \$ 4,000.00, and that the same should be paid to the Insurance Commissioner as above outlined.

By C. C. McCULLOH

First Asst. Atty. Gen.