

## Opinion No. 45-4774

August 22, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Dr. James R. Scott, Director Department of Public Health Santa Fe, New Mexico

{\*120} In your letter dated August 22, 1945, you state that a certain amount of Federal assistance has been withdrawn in connection with the operation and maintenance of the New Mexico Intensive Treatment Hospital, and that the U. S. Public Health Service has notified you that it will be necessary for the State to make up the deficiency.

You further state that in 1935 the U. S. Public Health Service granted \$ 24,000.00 to the State of New Mexico to be placed in the District Health Officers' Fund for the purpose of paying salaries of Health Officers, pending collection of taxes under the 1935 law, setting up Health Districts. You inquire whether the State Health Department has authority, at this time, to transfer and divert \$ 24,000.00 from the District Health Officers' Fund to make up the deficiency needed by the New Mexico Intensive Treatment Hospital.

The Federal grant of \$ 24,000.00 in 1935 no doubt was spent for the purpose for which it was granted at the time, or else it has been commingled with the District Health Officers' Fund and could not, at this time, be spent for any purpose not authorized by Legislative appropriation.

{\*121} Section 71-206 of the N.M. 1941 Compilation establishes a District Health Officers' Fund, and contains a continuing annual appropriation from such fund in the sum of \$ 48,000.00, or so much thereof as may be necessary to pay the salaries and travel expenses of the various District Health Officers.

If a surplus has accumulated in such fund, such surplus can only be spent in the manner and for the purposes as designated by Legislative appropriation.

It is noted that in the appropriation for the current fiscal year, contained in Chapter 139, Laws of 1945, to the Department of Public Health, this language appears:

"Provided, that all funds granted by the Federal Government, and funds from all other sources covered into the State Treasury for the use of the Department of Public Health, are hereby appropriated for the Department of Public Health."

There seems to be very little question that this proviso was intended to apply only to funds granted and received during the current fiscal year to augment appropriations for the purposes contained in the Appropriation Act, and would not cover funds granted in 1935 for other purposes.

For these reasons, I am of the opinion that the State Health Department does not have legal authority to transfer and divert \$ 24,000.00 from the District Health Officers' Fund for the use of the New Mexico Intensive Treatment Hospital.