

ATTORNEY GENERAL OPINION
NO. 83-2

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OPINION
OF
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Attorney General

TO: The Honorable Michael Alarid
New Mexico State Senator
State Capitol, Room 123
Santa Fe, New Mexico 87503

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QUESTION:

Does the New Mexico Constitution permit the inclusion of the substantive provisions of House Appropriations and Finance Committee substitute for House Bill 51 (House Bill 51) and House Bill 211, as they are now written, in House Bill two, the 1983 General Appropriations Act?

CONCLUSION:

Yes, except for the provisions of Sections 14 through 22 of House Bill 51.

ANALYSIS:

The material which may be included in legislative bills generally, and in general appropriations acts specifically, is governed by Section 16 of Article IV of the New Mexico Constitution. It provides:

The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but

if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void. General appropriation bills shall embrace nothing but appropriations for the expense of the executive, legislative and judiciary departments, interest, sinking fund, payments on the public debt, public schools and other expenses required by existing laws; but if any such bill contain any other matter, only so much thereof as is hereby forbidden to be placed therein shall be void. All other appropriations shall be made by separate bills.

In order to be included in the 1983 General Appropriations Act (the 1983 Act), the provisions of House Bills 51 and 211 therefore must comply with both the subject and title requirements of Section 16. Those provisions must be within the scope of the Act's coverage as defined and its title, which is "An Act Making General Appropriations and Authorizing Expenditures by State Agencies and Distributions of Public Education Required by Law." On the basis of the New Mexico Supreme Court opinions construing Section 16 of Article IV, it is our opinion that all of these Bills' substantive provisions are within the scope of the 1983 Act's subject matter and title, except for the special appropriations provisions contained in Sections 14 through 22 of House Bill 51.

House Bill 51 has 25 sections. Of these, Sections one, two, 24 and 25 are procedural. Sections three through 11 each provide for the transfer of certain funds into the general fund, authorize the sale of severance tax bonds, and appropriate the proceeds of the bonds to replace the transferred amounts. Section 12 authorizes the Governor to reduce

State agencies' appropriations as well as the rates for distribution per student for technical and vocational institutes and the rate for distribution per program unit for the public school fund. Section 12 also authorizes him to allow the State budget division to approve budget transfers of up to ten percent. Section 13 authorizes the Chief Justice of the Supreme Court to take the same action with regard to the agencies of the judicial branch of government. Section 14 through 22 each reduces a specific appropriation made to a State agency by a law other than a general appropriations act.

House Bill 211, on the other hand, has only one substantive section. Section one of the Bill amends existing law to provide that certain funds which the State is to receive shall be credited to the operating reserve fund rather than to the severance tax permanent fund.

The New Mexico Supreme Court has decided several cases involving the issue of what may be included in a general appropriations act. In State ex rel. Lucero v. Marron, 17 N.M. 304, 128 P.485 (1912), the Court considered a challenge to a section of the 1912 General Appropriations Act which provided for the issuance of certificates of indebtedness, and specified their form, rate of interest, etc. (Two other sections of the 1912 Act appropriated the proceeds from the certificates' sale for the purposes of paying deficiencies incurred in Territorial fiscal years and constructing a school building.) The section was alleged to be invalid because it was not within the scope of either the Act's appropriation subject or the 1912

Act's title.¹ The Court rejected the challenge, ruling that enactment of that section as part of the 1912 Act did not violate Section 16 of Article IV. In its opinion, which the Court has cited and quoted with approval in several subsequent cases, the Court indicated that Section 16 is to be construed broadly:

The position taken against the validity of the certificates of indebtedness is, that by the section, which is set out in full hereinbefore, nothing can be included in a general appropriation bill except direct appropriations of money, and that any provision in said bill other than such appropriations, is void. If we looked only at the strict letter of the section in question, without giving any thought to the evident purpose and intent of the framers of the instrument, and the purpose designed to be accomplished, we might be convinced of the correctness of this proposition, but we think a consideration of the section, the object sought to be accomplished, the evil which it

The title was:

"An Act Providing Funds and Making Appropriations for the Fiscal Year for the Expenses of the Executive, Legislative and Judicial Departments; for the Payment of Interest on State Indebtedness and Sinking Funds Requirements Thereof; to Defray the Expenses of the Educational, State and Charitable Institutions and Hospital, and all Other Expenses Required by the Existing Laws of the State of New Mexico, and Making Appropriations for Deficiencies in the Revenues of Former Fiscal Years, Which Deficiencies Were Incurred by the Requirements of Existing Laws."

was designed to prohibit and intent of the framers of the section, will compel a different conclusion. The primary object was undoubtedly to protect the state treasury against legislative raids by the insertion of special appropriations for new purposes in a general appropriation bill where they might pass unnoticed, when possible, careful scrutiny and examination of such items upon their merits is presented separately, would result in their defeat. It was evidently also designed to prevent general legislation in such a bill, in no way related to making provision for the expenses of the government. When the constitution says "general appropriation bills, shall embrace nothing but appropriations" for certain specified purposes, it must mean that no appropriations, other than those specified, would be valid in such a general bill. To sustain the contention that the general appropriation bill should contain nothing, save the bare appropriations of money, and that provisions for the expenditure of the money, or its accounting, could not be included therein; or that the method and means of raising the money appropriated could not likewise be included, would lead to results so incongruous that it must be presumed that the framers of the constitution had no such intent in the adoption of the restrictions referred to. ...What vice or evil can there be in making provisions in such an act, which are incidental to the main fact of the appropriation? The limitation was imposed upon the main act of the

appropriation and not the matters of detail connected with such appropriation. Numerous states have provisions similar to that contained in the first part of Section 16 supra, which require the subject of every bill to be clearly expressed in its title, and that no bill embracing more than one subject shall be passed, etc., and the courts all uniformly hold that any matter germane to the subject expressed in the title of a bill and naturally related to it, is valid. When an appropriation is made, why should not there be included with such appropriation matter germane thereto and directly connected with it, such as provisions for the expenditure and accounting for the money, and the means and methods of raising it, whether it be by taxation, or by some other method? What valid objection can be interposed to such a course, so long as the legislature confines the incidental provisions to the main fact of the appropriation, and does not attempt to incorporate in such act general legislation, not necessarily or directly connected with the appropriation legally made, under the restrictions of the section in question? (17 N.M. at 314-16).

The Court's decisions on Section 16 since the Marron case are similar. In State ex rel. Whittier v. Safford, 28 N.M. 531, 214 P.759 (1923), the Court held valid a provision in the 1922 General Appropriations Act which set a per diem rate. The Court reiterated the purposes of Section 16 expressed in the Marron opinion, and pointed out further that:

The details of expending the money so appropriated, which are necessarily connected with and related to the matter of providing the expenses of the government, are so related, connected with, and incidental to the subject of appropriations that they do not violate the Constitution if incorporated in such general appropriation bill. It is only such matters as are foreign, not related to, nor connected with such subject, that are forbidden. Matters which are germane to and naturally and logically connected with the expenditure of the moneys provided in the bill, being in the nature of detail, may be incorporated therein. Otherwise everything connected with the expenditure of money provided in the general appropriation bill would have to be provided in separate and special acts of the Legislature--a condition which was never intended. (28 N.M. at 534-35).

The Whittier case did not involve Section 16's title requirement, but in two more recent decisions, the Court has reconfirmed that both it and the subject requirement are to be read in the broad manner indicated in the Marron case. In State ex rel. Holmes v. Board of Finance, 69 N.M. 430, 367 P.2d 925 (1961), the Court decided, primarily on the basis of the Marron decision, that neither requirement of Section 16 was violated by the inclusion of the 1961 General Appropriations Act of a section permitting the State Board of Finance to reduce all State agencies' annual operating budgets by up to ten percent. In National Building v. State Board of Education, 85 N.M. 186, 510 P.2d 510 (1973), the Court rejected a challenge to a provision in a section of the 1971 General Appropriations Act which required a State agency to move its Albuquerque

office. Citing its decision in the Whittier and Holmes cases, the Court held that directive to be "germane to and naturally connected with the expenditures of moneys" provided by that section of the Act.

Like the title of the 1912 Act involved in the Marron case, the titles of the 1961 and 1971 Acts construed in the Holmes and National Building decisions were quotations from Section 16.² The title of the 1983 Act is much less specific. It indicates only that it makes general appropriations, and authorizes expenditures by agencies and distributions for public education. It would therefore be construed at least as broadly as were the 1961 and 1971 Acts.

For these reasons, we conclude the following with regard to inclusion in the 1983 Act of the specific substantive sections of House Bills 51 and 211. The provisions of Section three

The 1961 Act was titled:

"The General Appropriation Act Making Appropriations and Authorizing Expenditures for Executive, Legislative and Judicial Departments, Institutions, Interest, Sinking Funds, Payment of Public Debt, Public Schools, Public Buildings and Other Expenses Required by Existing Laws During the Fiftieth and Fifty-First Fiscal Years, and Making Additional and Emergency Appropriations for the Forty-Ninth Fiscal Year."

The 1971 Act's title was very similar:

"Making General Appropriations and Authorizing Expenditures For Legislative, Judicial and Executive Agencies, Departments and Institutions, Interest, Sinking Funds, Payment of Public Debt, Public Schools, Public Buildings and Other Expenses Required by Law for the Sixtieth and Sixty-First Fiscal Years and Making Deficiency Appropriations for the Fifty-Ninth Fiscal Year."

through 11 of House Bill 51 which transfer funds are germane to appropriations and are within the scope of the 1983 Act's title. The Marron decision indicates that this conclusion also applies to the provisions of those Sections authorizing the issuance of bonds and appropriating the proceeds. All of House Bill 51 sections three through 11 may therefore be included in the 1983 Act. House Bill 51 Sections 12 and 13 also meet both the title and subject requirements of Section 16, and may be included in the 1983 Act pursuant to the Holmes case. Sections 14 through 23 of House Bill 51, on the other hand, reduce appropriations which were not made by a general appropriations act. It is therefore our opinion that they are "other appropriations made by separate bills" under Section 16, and that they may not be included in the 1983 Act. The only effect of Section one of House Bill 211 would be to change the fund to which certain moneys are to be credited when the State receives them. We therefore conclude that it may be included in the 1983 Act.