

INQUIRY INTO THE USE BY THE EMPLOYMENT SECURITY COMMISSION OF NEW MEXICO OF MONIES COLLECTED FROM EMPLOYERS IN PAYMENT OF FINES, PENALTIES AND INTEREST UNEMPLOYMENT INSURANCE SERVICE, DEPARTMENT OF LABOR

B-126738
6-9-70



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RESTRICTED

Report to the Chairman, Legislative Subcommittee, Senate Committee on Appropriations, pursuant to his request.

We furnished information that:

1. The Employment Security Commission of New Mexico collected moneys from employers in payment of fines, penalties, and interest on delinquent contributions of unemployment insurance taxes and placed such moneys in a fund identified as the Employment Security Commission Fund.
2. The most usual uses of the fund were (a) to cover expenditures for which Federal funds had been requested but not received, subject to subsequent repayment to the fund, (b) to pay costs of administration found not to be properly chargeable against funds obtained from Federal sources, and (c) to replace funds lost or improperly expended for purposes other than, or in amounts in excess of those found necessary for proper administration.
3. A Department of Labor official advised us that, generally, State auditors did not audit employment security agencies because the agencies were audited periodically by the Department.

[Use of New Mexico Employment Security Commission Moneys]

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9/5/80

DIGEST

REVIEW OF THE USE BY THE EMPLOYMENT SECURITY
COMMISSION OF NEW MEXICO, OF MONEYS COLLECTED
FROM EMPLOYERS IN PAYMENT OF FINES, PENALTIES,
AND INTEREST

B-126738
June 9, 1970

RESTRICTED

At the request of the Chairman, Legislative Subcommittee of the Senate Committee on Appropriations, we inquired into the use by the Employment Security Commission of New Mexico of moneys collected from employers in payment of fines, penalties, and interest on delinquent contributions of unemployment insurance taxes. We inquired also into whether the State's auditors had been allowed to audit the special fund, in which these moneys were accumulated.

Our examination showed that the fund in question was identified as the Employment Security Commission Fund. According to a Department of Labor publication, some 40 States (one of which is New Mexico) have established funds of this nature to meet special needs.

The Employment Security Commission Fund was created pursuant to section 59-9-13(b) of the New Mexico statutes, separate and apart from the unemployment compensation administration fund, to be held in the custody of the State Treasurer.

The statute provided that the fund could be used for the payment of costs of administration which are found not to have been properly and validly chargeable against Federal grants or other funds received for the unemployment compensation administration fund.

Revised

Information available at Department of Labor headquarters indicated that, when the Commission submitted its budget request to the Department of Labor for fiscal year 1969, the Commission requested funds for additional staff above the fiscal year 1968 staffing level. The Department, however, found it necessary to reduce the employment service positions for the Commission in fiscal year 1969.

Department records indicated that the Commission continued carrying a number of positions in excess of authorized staffing and funding levels throughout fiscal year 1969. During the third quarter of fiscal year 1969, the Department concluded that the Commission's level of expenditures would exceed the remaining obligational authority available to the Commission. The Department revoked the letters of credit for the fourth quarter for all funds available to the Commission and began issuing monthly Treasury checks in amounts equaling one third of the approved adjusted obligational authority for the fourth quarter. As a result of the Department's action, the Commission began using money from the Employment Security Commission Fund to pay for the costs of administration not covered by Federal funds.

The record showed that, for fiscal year 1970, the Commission adjusted its staff to the approved levels and the Department again had made letter-of-credit funding available to the Commission.

Revised

A Department of Labor official advised us that, generally, State auditors did not audit employment security agencies because the agencies were audited periodically by the Department of Labor.

Based on an interpretation of the Federal Unemployment Tax Act (26 U.S.C. 501-503), it was our view, as well as the view of the Department of Labor, that fines, penalties, and interest collected by a State in the enforcement of its unemployment compensation law were not required by Federal statute to be deposited in the State's unemployment compensation fund. We therefore believe that the New Mexico Employment Security Commission Fund constitutes a State fund and as such is not within the purview of this Office's audit authority.

A Department of Labor official stated that such funds are not audited by Federal auditors because the funds are considered to be State funds. The official has advised us that the balances of all funds utilized by a State employment security agency, including penalty and interest funds, are reconciled by Federal auditors during the review of receipts and disbursements of Federal grant funds. He has pointed out, however, that penalty and interest fund transactions are not audited by Federal auditors.

Under the New Mexico statutes, the State auditor is responsible for auditing State agencies and commissions. Federal officials with whom we discussed these matters were unable to comment on the relationship between the Commission and the State auditor. We were informed, however, that the Employment

Revised

Security Commission Fund has been audited by the public accounting firm of Peat, Marwick, Mitchell, and Co., under a contract with the State auditor. The audit covered the period January 1, 1966, through June 30, 1969. A report dated January 1, 1970, was sent to the State in February 1970; however, a copy of the report is not available to the Department.

Revised

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SECURITY COMMISSION OF NEW MEXICO, OF
MONEYS COLLECTED FROM EMPLOYERS IN
PAYMENT OF FINES, PENALTIES, AND INTEREST

B-126738
June 9, 1970

State Agency Operations

State agency use of moneys collected in the form of fines,
penalties, and interest on delinquent contributions of
unemployment insurance taxes.
Audit of the special fund in which these moneys were
accumulated

Revised