

the expense of the State, and the hospital now has a claim for this unpaid maintenance which is in excess of the fund on deposit.

You desire to be advised whether you should honor the claim of the administrator and make payment to him of this asset in the estate of the decedent in view of the counterclaim of the State for unpaid maintenance.

It is our opinion, and we so advise you, that you cannot make payment to the administrator of the sum of money which was turned over to your office under R. S. 30:4-132 unless and until such an item is included in an appropriation act approved by the Legislature.

This for the reason that these moneys have long since been merged with other State funds in the Treasury and "no money shall be drawn from the State Treasury but for appropriations made by law." (N. J. Constitution, Art. VIII, Sec. II, par. 2.)

In view of the foregoing, it becomes unnecessary to advise you at this time regarding the effect of the counterclaim of the State against these funds for maintenance of the decedent at a State institution.

This is a proper matter for consideration by the Legislature at the time of passage of such legislation.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:HH

July 19, 1949.

HON. J. LINDSAY DEVALLIERE,
Director, Division of Budget and Accounting,
State House,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 76.

DEAR DIRECTOR DEVALLIERE:

This will acknowledge your communication dated July 14, 1949, asking for an opinion as to the language of the 1948-1949 Appropriations Act concerning the request made by the Highway Department for the carrying over of \$27,000 of the 1948-1949 salary appropriations to the fiscal year 1949-1950 for the purpose of paying salaries of employees to be hired in the future.

Section 1, Chapter 117, P. L. 1948, reads as follows:

"1. The appropriations herein made or so much thereof as may be necessary are hereby appropriated for the respective public officers and for the several purposes herein specified for the fiscal year ending on the thirtieth day of June, one thousand nine hundred and forty-nine. The appropriations herein made for debt service, for State aid to counties and municipalities under R 3, and for State Highway purposes under R 8, herein shall not lapse

by reason of the expiration of said period. *The appropriations herein made, other than those for debt service, State aid to counties and municipalities under R 3, and for State Highway purposes under R 8, shall be available for expenditure during said fiscal year and for a period of two months thereafter to pay obligations incurred during said period only. At the expiration of said two months period all unexpended balances except in appropriations herein made for debt services, State aid to counties and municipalities under R 3 and for State Highway purposes under R 8 and in appropriations to the extent specifically held by contracts on file with the Commissioner of Taxation and Finance shall lapse into the State treasury, or in cases of appropriations from special funds, shall lapse to the credit of such special funds. Nothing in this section or in this act contained shall be construed to prohibit the payment due upon any contract made under any appropriation contained in any highway appropriation bill of the previous year or years.*" (Italics our own.)

Under this provision, appropriations are available for expenditure during the fiscal year and for a period of two months thereafter in order to pay obligations incurred during the said period only.

It is the opinion of this office that all moneys appropriated and not expended by the Highway Department for State Highway purposes under R 8 for the fiscal year remain in the State Highway as highway funds. However, it may not be expended until appropriated by the Legislature as provided by Article I, Section II, paragraph 2 of the Constitution. It reads as follows:

"No money shall be drawn from the State Treasury but for appropriations made by law * * *."

Inasmuch as the Legislature only appropriated money for the paying of salaries for the fiscal year 1948-1949, it is clear that the Highway Department is not authorized to expend any moneys from its unexpended balance for said fiscal year for the payment of salaries for the fiscal year 1949-1950 unless appropriated.

It is, therefore, the opinion of this office that you are not permitted by law to allow the Highway Department to use the 1948-1949 funds, not appropriated, for the payment to employees hired for the fiscal year 1949-1950.

Respectfully yours,

THEODORE D. PARSONS,
Attorney General,

By: BENJAMIN M. TAUB,
Deputy Attorney General.