

Balance of unencumbered funds

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Subject:
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FLORIDA STATE COMMISSION ON HISPANIC AFFAIRS--REVERSION OF BALANCES OF APPROPRIATION NOT EXPENDED

To: The Honorable Bob Graham, Governor, State of Florida

Prepared by: Craig Willis, Assistant Attorney General

QUESTION:

Does any balance of undisbursed and unencumbered funds appropriated from the general revenue fund to the Commission on Hispanic Affairs revert to the general revenue fund at the end of the fiscal year?

SUMMARY:

The Florida State Commission on Hispanic Affairs is statutorily exempted from the requirements of Ch. 216, F.S., relating to the reversion of balances of appropriations not expended or contracted to be expended at the end of each fiscal year; any undisbursed and unencumbered balance of the 1980-1981 appropriation from the general revenue fund to the Commission is not required to revert to the general revenue fund at the end of the fiscal year.

The Florida State Commission on Hispanic Affairs is statutorily created by s. 14.25, F.S., for the purpose of carrying out a comprehensive and ongoing study of the problems and needs of those citizens of Florida who predominately speak the Spanish language. See s. 14.25(1) and (4)(a), F.S. The commission is created within the Executive Office of the Governor and consists of 15 members who are appointed by the Governor. Section 14.25(2)(a), F.S. The members serve terms of 4 years without compensation, but are reimbursed for per diem and travel expenses in accordance with s. 112.061, F.S. See s. 14.25(2)(c) and (d), F.S. The commission has the authority to employ an executive director and such other personnel as may be necessary to carry out its statutorily vested duties and functions. See s. 14.25(2)(f), F.S. The commission is required to prepare an annual report based on its study which is presented to the Governor, with copies to the President of the Senate and the Speaker of the House of Representatives. The report is to include specific suggestions for any necessary legislation and specific recommendations for any necessary administrative or regulatory reform which is deemed to be necessary. See s. 14.25(4)(b), F.S.

In order to carry out the commission's assigned duties and to implement the provisions of s. 14.25, the Legislature appropriated from the general revenue fund \$157,410.00 to the

commission for the fiscal year 1979-1980 and the same amount for the fiscal year 1980-81. See s. 1, item 229, Ch. 79-212, Laws of Florida. This appropriation provides that it "is to assist the Florida Commission on Hispanic Affairs in implementing the provisions of Chapter 13, Part V, Florida Statutes," (now s. 14.25, F.S.); and further that "[n]o funds appropriated in item 229 are to be used for any social event or political activity." See *also* s. 1425(3)(d), F.S., which provides that the commission may apply for and accept funds from the state, the government of the United States or any other public or private source and authorizes the commission to use any such funds to defray clerical and administrative costs as may be necessary for carrying out its assigned duties. You question whether any undisbursed and unencumbered portion of this appropriation should revert to the state general revenue fund at the end of the fiscal year pursuant to s. 216.301, F.S.

Section 216.301(1)(b), F.S., provides that "[a]ny balance of any appropriation, except for fixed capital outlay, not expended or contracted to be expended at the end of each fiscal year shall revert to the fund from which appropriated and be available for reappropriation by the Legislature." This section requires that any undisbursed and unencumbered portion of an appropriation, except for fixed capital outlay, made from the general revenue fund should revert to that fund at the end of the fiscal year. Thus, if the appropriation made pursuant to s. 1, item 229, Ch. 79-212, Laws of Florida, is subject to the reversion requirements of s. 216.301, F.S., any undisbursed and unencumbered balance of that appropriation must revert to the general revenue fund at the end of the fiscal year 1980-1981.

The Commission on Hispanic Affairs is a state agency subject to the statutory requirements pertaining to state agencies for a number of purposes. See AGO 080-29. However, s. 14.25(1), F.S., in pertinent part, expressly provides that "[t]he commission [on Hispanic Affairs] created by this act [Ch. 77-233, Laws of Florida, as amended] is not an executive department or agency for purposes of assignment under s. 6 of Art. IV of the State Constitution, *nor is it an agency within the legislative intent of chapter 216 or chapter 287.*" (Emphasis supplied.) This provision clearly exempts the Commission on Hispanic Affairs from the requirements of Ch. 216, F.S., and thus the specific reversion requirements of s. 216.301, F.S., for any undisbursed and unencumbered balance of the commission's appropriations; nor am I aware of any other statute or rule of law that would require a reversion of such balance to the general revenue fund.