Opinion No. 46-4971

December 17, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. Pete Baca, Director Operators' and Chauffeurs' License Division Bureau of Revenue P. O. Box 1686 Santa Fe, New Mexico

{*292} We have your letter of December 14, 1946, inquiring whether or not your department must make distribution **to a newly incorporated municipality** of an amount equal to 40% of the fee received from each and every applicant to whom a license is granted and who resides within such municipality.

Section 68-308, subsection (d) of the New Mexico Statutes Annotated, 1941 Compilation provides:

"The department shall distribute to each incorporated municipality an amount equal to forty (40) per centum of the fee received from each and every applicant to whom license is granted and who resides within such municipality, Provided, however, that the clerk in each such municipality shall be required to receive applications for licenses, to collect the proper fees thereof and to remit the same monthly to the department, if the department may require, and that no part of the forty per cent (40%) shall be distributed to any municipality in which the clerk refuses to perform the duties herein required without additional cost to any applicant or to the department."

It is therefore my opinion that if such municipality complies with the aforementioned Act, it is entitled to 40% of the fees received from each and every applicant to whom a license is granted and who resides within such municipality.

No doubt the department could rightfully refuse to make such distribution to any municipality that failed to comply with the provisions as set forth in the aforementioned section.

I am herewith enclosing a copy of an opinion No. 4632, written by Mr. Ward of this office on January 9, 1945, wherein a certain factual situation was presented wherein it was held the municipality would forfeit any right to the distribution of said fees.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General