

## Opinion No. 47-4998

March 12, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mike Gallegos, Commissioner Motor Vehicle Department Bureau of Revenue Santa Fe, New Mexico

{\*21} In your letter of March 7, 1947, you request the opinion of this office as to whether you, as Commissioner of the Motor Vehicle Department, State of New Mexico, may legally refund one-third of motor vehicle license fees paid by veterans who were denied that exemption during the time that the question was in litigation.

You also ask whether the fact that the license fee was paid under protest would make any difference, insofar as your making a refund is concerned.

At the outset, I want to call your attention to a provision of the New Mexico Constitution which prohibits any payments out of the state treasury without an appropriation by the Legislature. That constitutional provision is Section 30, Article 4, and it provides that:

"Except interest on or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. **Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied.**"

Section 68-231, New Mexico Statutes 1941 Compilation, sets out the disposition to be made of license fees collected and provides that they shall be paid over to the State Treasurer not later than the close of the second business day after their receipt. After a deduction of an amount for the expense of administration and enforcement of the act, the remainder of the moneys are to be distributed by the State Treasurer on or before the tenth day of the month next after their receipt.

Section 68-226, New Mexico Statutes 1941 Compilation, provides for an exemption to veterans of one-third of motor vehicle license fees, provided they have not already claimed the full \$ 2,000 property tax exemption allowed by Section 76-113 New Mexico 1941 Compilation. However, I am unable to find any statute which makes an appropriation for such refunds or which authorizes {\*22} the Commissioner of the Motor Vehicle Department, or any other administrative officer, to make a refund to veterans when they have paid the full amount of the license fee, regardless of whether the same was or was not paid under protest.

Where an administrative officer has received money as the property of the state and has covered it into the Treasury as such, it becomes exclusively state property. The

legislature, and not an administrative officer, may determine that it was erroneously exacted and may be returned.

In view of Section 30, Article 4 of the New Mexico Constitution, and in view of the further fact that there is no statute which makes an appropriation for such refund, or which authorizes or empowers the commissioner of the Motor Vehicle Department, or any other administrative officer, to make this refund, it is the opinion of this office that you may not legally refund one-third of motor vehicle license funds to veterans who were denied that exemption during the time that the question was in litigation, regardless of whether the fees were or were not paid under protest.

In arriving at this conclusion on the specific question asked, I have considered Section 7-203, New Mexico Statutes, which authorizes suspense funds for repayment in instances where administrative officers have received monies paid into a state agency "on deposit, in escrow, or in evidence of good faith \* \* \*" and not yet "earned so as to become the absolute property of the State". We are not dealing in the present situation, with those types of monies. See *McAdoo Petroleum Corporation v. Pankey*, 35 N.M. 246; 294 P. 322.

I have also considered Section 76-404 of the Supplement to New Mexico Statutes, 1941 Compilation, which provides for refunds of **ad valorem** taxes, upon petition to and judgment of the District Court.

I do not determine in this opinion whether or not a veteran could recover such fees by court action under Section 76-404, above. I only state, in answer to your specific question, that Section 76-404, above, does not authorize you as Commissioner of the Motor Vehicle Department, to make the refund.

Trusting the above sufficiently answers your inquiry, I am

By WM. R. FEDERICI,

Asst. Atty. General