

Opinion No. 54-6262

December 21, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Alfred W. Kaune State Bank Examiner Santa Fe, New Mexico

{*537} Receipt is acknowledged of your letter of December 17, 1954, requesting the opinion and advice of this office as to what action you should take concerning an application for renewal of small loan licenses filed in your office by National Loan Company, Local Finance Company and Capital Finance Company, licensees under the Small Loan Act. Receipt is also acknowledged of your further communication, dated December 20, 1954, advising that suspension and revocation proceedings were formally instituted against the three above-named companies by your office and that notices of your contemplated action and of hearings thereon went forward to J. H. Taylor and P. E. Leake, a co-partnership, d/b/a under the name and style of each of the three companies mentioned under date of December 18, 1954. Such notices of contemplated suspension, revocation and hearing on each of them having been issued by your office, pursuant to the provisions of §§ 8-a and 8-b of Chapter 174, Session Laws of 1947 New Mexico Small Loan Act).

It is noted from your communications above referred to that on December 13, three applications for renewal of license were tendered to your office, one each on behalf of each of the above-named licensees, together with the sum of \$ 75.00, in currency, accompanying each application, making a total of \$ 225.00 tendered in connection with the three applications. You further ask the opinion of this office as to what action should be taken concerning the \$ 225.00 currency which has been tendered in connection with these applications.

It is noted that the powers of attorney also accompanying the applications and original tender on December {*538} 13, 1954, did not authorize any of the three parties present and making the tender to act on behalf of any of these licensees. It is also noted that under date of December 16, 1954, a renewal of such tender was made by one, Roy H. Shaub, who appeared personally in your office and tendered a new power of attorney executed by J. H. Taylor and P. E. Leake, under date of December 14, 1954, wherein said J. H. Taylor and P. E. Leake, purportedly d/b/a as a co-partnership under the trade names of National Loan Company, Capital Finance Company, Local Finance Company, United Operating Company and Western Guaranty Loan Company, appointed Roy H. Shaub and Irving Miller, jointly and individually, as their true and lawful attorneys to act for and on behalf of said J. H. Taylor and P. E. Leake in carrying on the partnership business or other matters pertaining thereto.

At the time the latter tender of license fees was made, you state that you had under consideration and preparation, suspension and revocation proceedings concerning the three above-named licensees upon behalf of whom such tender was made. You state

further that under date of December 18, 1954, formal notices of your intention to proceed with suspension and revocation proceedings and notices of the hearings thereon were formally issued and placed in the mail, directed to each of the copartners, J. H. Taylor and P. E. Leake.

It is our opinion, and you are so advised, that it is not necessary or required that you act immediately in making a decision as to whether or not the tendered offer of renewal fees should be accepted nor are you required, under the Small Loan Act, to take any such action which would commit you to a renewal of said licenses until the 31st day of December, 1954.

It is our further opinion, and you are so advised, that in view of the fact that suspension and revocation proceedings were pending before you, although not yet heard, on December 20, 1954 (the day specified under the Small Loan statute for the payment of renewal fees) that you are under no obligation to accept or act upon the tendered offer of renewal fees until after the disposition of the revocation or suspension proceedings. In this connection it is noted that § 6-c of the Small Loan Act provides as follows:

"Each license shall remain in full force and effect until surrendered, revoked or suspended as hereinafter provided. Every licensee shall on or before the 20th day of December pay to the Examiner the sum of \$ 75 for each license held by him, as a license fee for the succeeding calendar year."

The acceptance and issuance of your official receipt for the tendered money under the provisions of this statute would probably automatically constitute a renewal of this license by force of the wording of the statute and a possible waiver of your contemplated suspension and revocation proceedings. You are accordingly advised that these fees should not be accepted by you or your receipt therefor issued but, on the contrary, that the tendered offer should be refused upon the ground that suspension and revocation proceedings are now pending and the money should be returned by you to Mr. Roy H. Shaub, at Nashville, Tennessee, he being the party technically from whom the money was received.