

**Opinion No. 55-6234**

July 25, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Woodlan P. Saunders, State Bank Examiner, State Banking Department, Santa Fe, New Mexico

You have requested an opinion from this office concerning the following problem:

"An application was made for four small loan licenses and a fee for \$ 800.00 was submitted therewith. Soon after the filing, and before your office could investigate, there was a request by the applicant to withdraw the request for licenses together with a request for a return of the filing fee."

You ask whether or not it would be legal to refund the filing fee to the applicant.

This office has many times ruled that a refund from the State Treasury, unless specifically provided by legislative action, cannot be accomplished. You, of course, are aware of this and ask further whether this refund could possibly be made from monies being accumulated in the Small Loan Suspense Fund as your office from time to time receives further applications together with the investigation fees.

I find no provision for a Small Loan Suspense Fund. § 48-17-56, 1953 Comp. (Ch. 128, § 27, Laws of 1955) provides that you only have to turn over to the State Treasurer monies collected by your office at the end of each month and said monies will be credited to the State Bank Examiner's Small Loan Administration Fund. It is further provided that all monies placed therein are appropriated for the purpose of administering the Small Loan Act. In a sense, you might say that if you held all collections until the end of the month before depositing same with the State Treasurer, that said monies are being held in suspense for that period and that you could make refunds therefrom of monies collected during that period, but only to those who have deposited monies with you in that period. However, once you deposit your collections with the State Treasurer, the same are credited to the Small Loan Administration Fund and there being no legislative provision to the contrary, any refund after that occurrence would be prevented by Art. 4, § 30 of the State Constitution.

By Jack A. Smith

Assistant Attorney General