

**Opinion No. 55-6249**

August 9, 1955

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

**TO:** Honorable D. M. Smith, Jr., State Comptroller, Santa Fe, New Mexico

We have your request of July 22, 1955 requesting an opinion as to the distribution of motor vehicle fees under Chapter 277, Laws 1955. You ask the following questions:

- (a) "May the distribution which is being made to the municipalities be credited to the General Fund of the Municipality?"
- (b) If it is proper to credit this money to the General Fund, does Chapter 277, Laws 1955, prohibit the transferring of funds on the authority from State Comptroller within the General Fund so that this money may be used for other purposes?
- (c) "Does the peculiar status of Los Alamos as a county, and enjoying certain privileges also as a municipality, prevent Los Alamos from participating in the distribution to municipalities?"
- (d) If Los Alamos can properly receive a share of this fund, may the county officials exercise control over the expenditure of these moneys?
- (e) "May Catron County distribute the money which it receives from the 10% distribution for municipalities to the unincorporated villages?"

The part of Chapter 277, Laws of 1955, to which these questions are addressed, reads as follows:

"Ten percent thereof shall be paid to the county treasurers of the several counties in the State and shall be paid to the respective county treasurers in the proportion that the total amount of registration fees paid for motor vehicles in each county bears to the total amount of registration fees paid for motor vehicles in the entire state. The respective county treasurers, upon receipt of the foregoing amounts, shall forthwith pay said amounts to incorporated municipalities, whether incorporated under general or special laws within the county. Payments to qualified municipalities shall be in the proportion that the total assessed valuation of a qualified municipality bears to the total assessed valuation of all the qualified municipalities within the county. Assessed valuation shall be determined by the assessed valuations of the fiscal year last completed. Amounts paid to municipalities under the provisions of this paragraph shall be used for the construction, maintenance and repair of streets within the municipality and for payment of paving assessments against Federal, state, county and municipally owned property."

We will answer the questions in the order above set forth.

(a) The statute does not specify where the money distributed under this provision shall be credited within the municipality. There is no prohibition against crediting this money to the General Fund. Note, however, the statute specifies that this money "shall be used for the construction, maintenance and repair of streets within the municipality and for the payment of paving assessments against Federal, state, county and municipally owned property." The Legislature created a special fund for incorporated municipalities which is to be used for the purpose set out. It would appear that it would be the better practice to set up a separate fund for the purpose of "construction, maintenance and repair of streets within the municipality and for payment of paving assessments against Federal, state, county and municipally owned property." At least there should be some system set up which would insure that these funds are used for the specific purposes set forth in the statute. It would seem that the use of the word "shall" in this statute is imperative. See 82 C.J.S. (Statutes), Sec. 380, page 877. It is our opinion that the Legislature intended that this money was to be used only for the purpose set forth and no other. The purpose of this part of the statute is to provide incorporated municipalities with money to improve the systems of streets and also provide that the vehicles which use the streets would bear part of the costs of such improvements.

(b) The answer to this question involves § 11-1-20, N.M.S.A., 1953, particularly that part reading as follows:

"Where not prohibited by existing law, the state comptroller [state board of finance] may, upon the written request of the state tax commission, bearing the written approval of the attorney general, authorize the transfer of funds from one (1) budget item to another, when such transfer is requested by the county, city, town, village, school district, drainage or irrigation district, board having control of the expenditure of funds provided by such budget. Provided, that in no case shall the comptroller [state board of finance] authorize or permit the use of funds in any sinking fund, interest fund, road fund or building fund, for any purpose other than the specific purpose for which such fund was created."

It is our opinion that since the Legislature specified a special purpose for which this fund could be used that there can be no transfer of this money to another purpose. The money actually is in effect a municipal road fund created by the Legislature and would come within the proviso prohibiting the transfer of this fund. If the fund can be diverted, the whole purpose for creating a fund for municipal street improvement can be defeated by the municipality by refusing to use the fund for its intended purpose, and requesting a transfer. As we pointed out above, the use of the funds is limited by statute to the designated purposes.

(c) It is the opinion of this office that only "incorporated municipalities" can share in the 10% fund. Since Los Alamos is a county, it should not share in these funds. The fact that Los Alamos has certain municipal privileges would have no bearing on the matter. To share in the fund, the municipal organization would have to be incorporated under a general or special law as the statute states. In view of this position taken, there is no need to answer the question set forth under (d) above.

(e) We are of the opinion that Catron County can not distribute moneys received under the above quoted part of the statute to unincorporated villages. Since the statute specifically states the moneys are to be distributed to incorporated municipalities, it seems clear that the Legislature did not intend that unincorporated villages should share in this fund.

The Legislature is presumed to know the fact that Catron County did not have any incorporated municipalities within its bounds. By the Legislature's failure to provide for unincorporated villages, it is presumed that these were not to receive part of the funds.

Trusting we have answered your questions, we remain

By Paul L. Billhymer

Assistant Attorney General