

Opinion No. 57-261

October 15, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Honorable Edward M. Hartman, State Finance Director, Department of Finance and
Administration, P. O. Box 1359, Santa Fe, New Mexico

QUESTION

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May \$ 2,221.29, which was held to the account of the Roswell Wrestling Council in April, 1953, and now deposited with the State Treasurer in a suspense fund, be returned to a separate legal entity apart from the Roswell Armory Board and set up for the purpose of conducting the functions of the former Roswell Wrestling Council?

CONCLUSION

Yes, subject to conditions stated in this opinion.

OPINION

ANALYSIS

In Attorney General Opinion No. 57-155, this office held that certain funds totaling \$ 4,536.41 were proceeds derived from rents, earnings and revenues from the Roswell National Guard Armory and consequently should be forwarded to the State Treasurer pursuant to § 9-7-9, N.M.S.A., 1953 Compilation, said section having effective date of April 1, 1953. At the time the section went into effect, \$ 2,221.29 had been accumulated from the year 1948. The question which now arises is whether the \$ 2221.29 can now be returned to a separate legal entity set up for the purpose of conducting the functions of the former Roswell Wrestling Council, or whether the 1953 law contains a retroactive effect so as to prevent such refund.

Our research on this question indicates that such a refund can be made subject to certain conditions discussed further in this opinion. As a general rule, retrospective or retroactive legislation is not favored. As stated in 82 C.J.S., p. 981, "It is well settled and a fundamental rule of statutory construction variously stated that all statutes are to be construed as having only a prospective operation and not as operating retrospectively." The primary question seems to be one of legislative intent. In the instant case, the statutes enacted by the Legislature pertinent to this subject indicate prospective effect. For example, § 9-7-5, which creates the State Armory Board, relates "**There is hereby created** the armory board council, . . ." Section 9-7-8 in part states "The armory board

may execute. . ." In other words, the intent of the statutes apparently gives the entire act a prospective as opposed to a retroactive effect.

One problem remains. As indicated in Opinion of Attorney General No. 57-155, no proper legal entity exists now to receive the refund. As this office has previously indicated to responsible parties concerned, we believe that a non-profit, charitable corporation should be established to receive the proceeds and to hold the funds in trust and administer the refund for the benefit of the various units making up the entire Roswell National Guard Unit. Such organization should be completely separated and divorced from the local Armory Board. The entity referred to above should negotiate at arms length with the Roswell Armory Board in regard to leasing the facilities for wrestling, and any lease entered into should be approved by the Governor of the State of New Mexico pursuant to the Armory Board Act.

Upon compliance with the above conditions, by way of summary, it is the opinion of this office that the \$ 2,221.29 may be refunded.

That part of Attorney General Opinion No. 57-155 which is in conflict with the instant opinion is hereby expressly overruled.