

Opinion No. 58-165

August 4, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Assistant Attorney General

TO: Ben Chavez, Secretary, State Board of Finance, Santa Fe, New Mexico

QUESTION

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May the State Bank Examiner refund a registration fee which has been collected and turned over to the State Treasurer?

CONCLUSION

No.

OPINION

ANALYSIS

Section 48-6-15, N.M.S.A., 1953 Compilation, provides for the disposition of fees and penalties collected by the State Bank Examiner and reads as follows:

"The state bank examiner shall keep a record of all fees and penalties collected by him, and all expenses of his office. **At the end of each month, unless otherwise provided by law, he shall turn over to the state treasurer all moneys collected during such month, together with a verified statement showing when and from what source the same were collected, which moneys shall be covered into the salary fund.**" (Emphasis ours)

As will be noted from a reading of the above statute, all moneys collected by the State Bank Examiner must be turned over to the State Treasurer at the end of each month and by him deposited in the salary fund, unless otherwise provided by law. Of course, no expenditure can be made out of the salary fund except salaries of employees which have been appropriated by the Legislature.

Also material to your inquiry is Article IV, § 30 of the Constitution of New Mexico, which provides:

"Except interest 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."

Unlike many other departments and agencies of the state, there is no specific refund statute in the Act creating the State Bank Examiner. In the absence of such a statute, this office has no alternative but to hold that the refund in question would be in contravention of Article IV, § 30 of the Constitution of New Mexico and therefore unlawful.