

Opinion No. 60-124

June 27, 1960

BY: OPINION of HILTON A. DICKSON, JR., Attorney General

TO: Mr. Paul R. Brown Executive Secretary New Mexico Real Estate Commission
Simms Building Albuquerque, New Mexico

QUESTION

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Should any possible or theoretical cash balances credited to the "real estate commission fund," which have accumulated pursuant to Section 67-24-25, N.M.S.A., 1953, P.S., as the result of the collection of license fees and examination fees, revert to the general fund at the end of the licensing year?

CONCLUSION

No.

OPINION

{*499} ANALYSIS

Section 67-24-25, supra, which is a section contained in the New Mexico Real Estate Licensing Act, the same being Section 67-24-19 to 67-24-35 and enacted into law as Chapter 229, Laws of 1959, states in part:

"The commission shall deposit all moneys received by it from fees in accordance with the provisions of this act (67-24-19 to 67-24-35) with the state treasurer, who shall keep such moneys in a separate fund to be known as 'real estate commission fund' and said moneys so deposited in said special fund are hereby appropriated for the purpose of paying the expenses of the commission incurred under the provisions of this act (and) shall be paid out of the said fund in the state treasury upon the vouchers of the president and secretary of the commission; provided that the total fees and charges collected and paid into the state treasury, and that any moneys so deposited shall be expended only for the purposes authorized by this act."

From the foregoing, it would appear that this section clearly appropriates all moneys received from examinations and annual licenses to the New Mexico Real Estate Commission to be expended only for the purposes authorized by the act.

Section 8, Chapter 288, Laws of 1959, the same being the General Appropriations Act, however, contains a direct appropriation for the use and benefit of the New Mexico Real Estate Commission and states in part:

"Cash balances remaining to the credit of any of the following boards at the end of the licensing year (excepting the education retirement board, cattle sanitary board, sheep sanitary board, dairy industry indemnity board, and the public employees retirement board) shall be transferred to the state general fund by order of the department of finance and administration. . . ."

An examination of the foregoing sections points up an inconsistency between the Real Estate Licensing Act and the General Appropriations Act, inasmuch as Section 67-24-25, supra, apparently provides for a direct appropriation of all moneys received by the real estate commission from fees, while Section 8 of the Appropriations Act requires that all excesses of revenue remaining from the collection of fees above that appropriated by the legislature shall revert to the general fund.

The apparent inconsistencies between the two sections would appear to be reconciled by Section 26 of the General Appropriations Act, which states:

"If any items included in this general appropriations act are appropriated in special acts of the twenty-fourth legislature, the appropriations in said special acts of the twenty-fourth legislature shall apply and such appropriations in this general appropriations act, whether of the same amounts, or larger or smaller amounts, shall be null and void."

Since, as we have previously noted, Section 67-24-25, is a special act of the Twenty-Fourth Legislature appropriating all money received by the Real Estate Commission as fees to that Commission for uses authorized by the New Mexico Real Estate Licensing Act, the appropriations in the General Appropriations Act are clearly not applicable. Therefore, it appears that possible cash balances remaining at the close of the fiscal year will not revert to the General Fund as the preliminary language of Section 8, Chapter 288, Laws of 1959, would otherwise direct. However, {*500} this is not to say that the fact that all fees received by the Real Estate Commission are appropriated directly to the Commission means that the normal budgetary procedures need not be followed. It appears that before any expenditures in excess of that heretofore budgeted may be made, appropriate increases in the budget must be approved by the Director of the Department of Finance and Administration in accordance with normal procedures. In other words, this opinion merely expresses our view that the fees received by the Commission are appropriated for purposes of the Commission and any unexpended balances do not revert to the General Fund.

By: Thomas O. Olson

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