

Opinion No. 60-189

October 13, 1960

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

TO: Mr. Benny Sanchez Commissioner Department of Motor Vehicles Santa Fe, New Mexico

QUESTION

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1. May you as Commissioner of Motor Vehicles distribute automobile license registrations as well as perform other functions of your office through salaried employees of the Motor Vehicle Department rather than through agents and agent offices?
2. If such services can be performed by salaried employees, may your office collect the administrative service fees presently collected by the agents and deposit such fees in the general fund?
3. If these services may be provided by salaried employees, may you seek emergency increases in your budget to cover the increased expenses of your office?

CONCLUSIONS

1. Yes.
2. No.
3. Yes.

OPINION

{*590} ANALYSIS

Your inquiry is precipitated by your belief that the efficiency in the handling of motor vehicle registrations and certificates of title may be increased in some areas through administration of these services by your office and salaried employees on your staff rather than through appointed agents acting in your behalf. Section 64-2-18, N.M.S.A., 1953 Comp., authorizes you to appoint agents to act in your behalf to receive all applications for registrations and to collect all fees and revenues and issue all licenses or permits and otherwise carry out the duties imposed upon you by law. However, this authority is given you when you deem "it necessary for the purpose of effecting economy in carrying out the functions of his (your) division and for the purpose of

providing necessary service to the people of this state." It further is provided in that same section that this may be accomplished in "counties, communities or areas where the commissioner maintains no regular supported office to provide such service." It thus becomes clear from the authorizing legislation for the appointment of agents that it is contemplated that such appointments should occur only upon determination by you that economies can be effected and services may be improved by such appointments. It is inherent in this statute as well as the remaining sections of Art. II, Chapter 64, that your office may provide these services through salaried employees if it is believed by you to be more efficient and economical to do so. Therefore, our conclusion to your first inquiry is in the affirmative.

In answer to your second question, may I refer you to Sec. 64-2-20, N.M.S.A., 1953 Comp. This section is the one authorizing you to establish a schedule of administrative service fees which may be collected by "**agents**" to defray the costs of operation of the "agents' offices and of rendering service to the public." This is the sole authority for the collection of this administrative service fee and in our opinion is exclusive for those offices operated by appointed agents. Now, it is possible that subsection (b) of Sec. 64-2-4, N.M.S.A., 1953 Comp., could be construed as authorizing you to adopt

and enforce rules and regulations which would prescribe such an administrative fee to be assessed by your staff employees as well. This section generally sets forth your authority to provide for rules and regulations "as may be necessary to carry out the provisions of this act." However, since your office is the subject of an appropriation by the legislature and it must be assumed it was their intent that your office should operate within the limits of this appropriation, it is our opinion that the subsection may not be so construed as to authorize the assessment of such fees by staff employees. We believe that such authority should be specifically defined as was done in connection with the operation of an agent's office.

In response to your third question, I merely point out that you may seek an emergency increase to fulfill your budgetary needs from the State Board of Finance. However, you should bear in mind that the funds made available to the State Board of Finance for budgetary increases are available "for emergencies and necessary expenses affecting the public welfare" only. The question of whether your needs involve an emergency or affect the public welfare is dependent upon facts not known to us and furthermore is, in the last analysis, for determination by {**591*} the State Board of Finance within available appropriations.

By: Thomas O. Olson

First Assistant Attorney General