

Opinion No. 61-122

December 1, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. Reyes Padilla, Commissioner, Motor Vehicle Division, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Is the provision in Section 64-13-75.2 relative to a twenty-five cent fee for color photographs on drivers' licenses sufficiently expressed in the title of the Act?
2. Is the title of the Act (Chapter 194, Laws 1961) sufficiently broad to sustain the validity of the provision relating to photographs on drivers' licenses?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

ANALYSIS

Your questions involve Chapter 194, Laws 1961, enacted with the following title:

"An act relating to fees for operators' and chauffeurs' licenses; amending sections 64-13-73, 64-13-75.1 and 64-13-75.2 New Mexico Statutes Annotated, 1953 Compilation (being Laws 1955, Chapter 179, Section 501 and Laws 1957, Chapter 26, Sections 1 and 2); and declaring an emergency."

A portion of this Act, compiled as Section 64-13-75.2, N.M.S.A., 1953 Compilation (P.S.), relates to the distribution of license fees and provides that twenty-five cents from each such fee is to be used to finance the photographing and processing of the photos to be placed on operators' and chauffeurs' licenses.

Your inquiry poses the following questions:

1. Does the twenty-five cent portion of the fee retained by the Division amount to an appropriation thereby violating Article IV, Section 16 of the New Mexico Constitution since the word appropriation is not mentioned in the title of the Act?

2. No mention of color photographs being imprinted on drivers' licenses having been made in the title of Chapter 194, Laws 1961, does the failure to do so render the provision violative of Article IV, Section 16 of the New Mexico Constitution?

Section 64-13-75.2 (A), supra, provides that one dollar out of each operator's license fee and fifty cents out of each chauffeur's license fee shall be distributed to the State general fund. Section 64-13-75.2 (B), supra, provides that twenty-five cents from each such fee shall be retained by the Division to finance the photographing and processing of photos to be imprinted on the licenses.

Even if the twenty-five cent fee distribution provision is to be classified as a continuing appropriation, we do not believe that it must be invalidated for failure to use the word appropriation in the title of the Act. This provision can hardly be said to be a hidden or concealed item which the title fails to sufficiently express. **Ballew v. Denson**, 63 N.M. 370, 320 P. 2d 382. Since the word "fees" is mentioned in the title, the reader is apprised that in all probability the Act will also contain a provision regarding the disposition of such fees. **Fowler v. Corlett**, 56 N.M. 430, 244 P.2d 1122. This is particularly true in view of the fact that the 1961 Act in question amended Section 64-13-75.2, supra (Chapter 26, Laws 1957) and the title of the 1957 Act specifically stated that it was an "Act relating to the collection and disposition of fees of operators and chauffeurs licenses." Where, as in this case, an act is merely an amendment of an earlier one, the title of an earlier act is also subject to scrutiny in determining whether there is compliance with the constitutional provision requiring that the subject of every bill be expressed in its title. **State v. Sifford**, 51 N.M. 430, 187 P.2d 540.

In the case of **State v. Ingalls**, 18 N.M. 211, 135 Pac. 1177, the Court was dealing with an Act which had the following title: "An Act to provide for State License on Automobiles." In the body of the bill were incorporated provisions for distribution of the license fee. Even though no mention was made of a fee or the distribution thereof in the title, the Court held that the subject was sufficiently expressed in the title. See also **State v. Miller**, 33 N.M. 200, 263 Pac. 510.

In concluding our answer to your first question, we would point out that even if the twenty-five cent fee distribution provision be deemed an appropriation, there does not appear to be any problem in connection with Article IV, Section 30 of the New Mexico Constitution which requires that "every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied." The enactment here in question meets these requirements.

In answer to your second question, we do not believe the failure to mention in the title that photographs are to be placed on drivers' licenses renders the provision violative of Article IV, Section 16 of the New Mexico Constitution. The photograph provision is certainly germane to the general subject of these particular licenses. **Johnson v. Greiner**, 44 N.M. 230, 101 P.2d 183. As the Court held in **State v. Ingalls**, supra, the true test is whether the title fairly gives reasonable notice of the subject matter of the statute itself. **State v. Aragon**, 55 N.M. 423, 234 P.2d 358. The photograph provision is

simply a detail in the general licensing scheme and has a rational and logical connection therewith, **State v. Roybal**, 66 N.M. 416, 349 P.2d 332.