

Opinion No. 61-57

June 30, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, Assistant Attorney General

TO: Mr. Edward M. Hartman, Director, Department of Finance and Administration, State Capitol, Santa Fe, New Mexico

QUESTION

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What is the proper distribution of revenues collected under Chapter 244, Laws 1961, in view of Section 72-14-14, N.M.S.A., 1953 Comp., (PS)?

CONCLUSION

See analysis.

OPINION

ANALYSIS

Chapter 244, Laws 1961, amended Section 72-14-2, N.M.S.A., 1953 Comp., to increase the excise tax rate on cigarettes. Under the old statute, the tax rate was \$.02 1/2 on each package of 10 cigarettes or less, \$.05 on each package containing more than 10 but not more than 20 and an additional \$.02 1/2 for each 10 cigarettes or less over 20 cigarettes in any one package. The amendment would increase these rates to \$.04 on each package of 10 cigarettes, \$.08 on each pack of \$.02 on each 10 cigarettes, \$.04 on each 10 cigarettes over the 20 in any one package. Under Section 72-14-14, N.M.S.A., 1953 Comp. (PS), the revenue collected under the provisions of Section 72-14-2 prior to amendment by Chapter 244, were disbursed on the basis of \$.02 on each 10 cigarettes, \$.04 on each package of 20 cigarettes and \$.02 for each additional 10 cigarettes to the General Fund. That section further provided that the remainder of the revenues were to be covered into a fund known as a County and Municipality Recreational Fund. Section 72-14-14 was not amended by the 1961 legislature and, therefore, the distribution rate was not changed. In view of the wording of Section 72-14-14, the question arises whether the additional tax levy provided by Chapter 244 goes to the General Fund or is placed in the County and Municipality Recreational Fund. As we view the problem, the increased revenue should be covered into the General Fund. Section 72-14-14 distributed the taxes collected under Section 72-14-2 as it existed prior to amendment by the 1961 legislature. We feel the distribution in that section is still effective as to the rates then in effect. We do not feel that it controls as regards the

increased revenue provided by Chapter 244, Laws 1961. Subsection B of Section 72-14-14 provides in part as follows:

"All revenues produced by taxes, over and above the taxes referred to in subsection A of this section, collected under Laws 1943, chapter 95, sections 1 to 15, inclusive, as amended, shall be paid over to the state treasurer and shall be placed by him in a fund to be known as the 'County and Municipality Recreational Fund', . . ."

As we view these words, they mean that the revenues produced by taxes collected under Section 72-14-2, which section is Laws 1943, chapter 95, section 2, as amended, shall be placed in the Recreational Fund with the exception of the distribution provided for in Subsection A of 72-14-14. We do not believe that Subsection B controls the distribution of the increased revenues that will be produced by Chapter 244, Laws 1961.

It is a well-known rule of statutory construction that a statute may adopt by reference procedures and provisions of other statutes. **Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy Dist.**, 57 N.M. 287, 258 P. 2d 381. As a general rule when such adoption is made, the referred to statute is adopted as it existed at the time of adoption if it is referred to specifically in the statute. To the contrary, if a statute refers to a law generally, without specially designating it by title and chapter, the referred to statute normally is adopted as it exists at the time of the application of the adopting statute. **Palermo v. Stockton Theatres**, 32 Cal 2d 53, 195 P. 2d 1; **Hopkins v. Detrick**, (Cal., 1950) 217 P. 2d 78; **Howard v. State ex rel. Stuckey**, (Ark., 1954) 267 S.W. 2d 763; **State ex rel. Walsh v. Buckingham**, 58 Nev. 342, 80 P. 2d 910, and generally 168 A.L.R. 628.

Applying this rule to the present statute, we are of the opinion that when Subsection B of Section 72-14-14 provided for the distribution of remaining taxes collected under Laws 1943, Chapter 95, Section 2, being 72-14-2, it applied only to the distribution of those taxes at the rate set forth in Section 72-14-2 at the time of the enactment of Section 72-14-14. Since it refers to 72-14-2, being Laws, 1943, Chapter 95, Section 2, specifically, rather than to the law generally, this would result in a continuation of the distribution of taxes at the rates provided for in Subsection A of 72-14-14 on the basis of collections provided for in 72-14-2 as it existed prior to the 1961 amendment.

What, then, is to be done with the increased revenues produced by Chapter 244, Laws 1961? Section 11-2-3.1, N.M.S.A., 1953 Comp. (PS), reads in part as follows:

"There is created a fund to be known as the 'General Fund' to which the state treasurer shall credit all revenues not otherwise allocated by law. * * *"

Therefore, since we have concluded that the distribution of these taxes under 72-14-14 does not apply to an increase provided by Chapter 244, we are of the opinion that these increased revenues are unallocated and that the increase from \$.02 1/2 to \$.04 on each package of 10 cigarettes and the increase from \$.05 to \$.08 on each 10

cigarettes over the 20 in any one package shall be credited to the General Fund as unallocated revenues pursuant to Section 11-2-3.1.