

## **Opinion No. 63-61**

June 3, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Howard E. Babcock, Jr. Chief, Liquor Control Bureau of Revenue Santa Fe, New Mexico

### **QUESTION**

#### QUESTION

When an applicant for a liquor license pays his license fee, but the license is not issued, should the Chief of the Division of Liquor Control refund the license fee?

#### CONCLUSION

No.

### **OPINION**

#### {\*132} **ANALYSIS**

Every applicant for a liquor license, before receiving the license is required to pay the license fee designated by Section 46-5-18, N.M.S.A., 1953 Compilation.

The Chief of the Division of Liquor Control has exclusive control over the issuance of licenses and the collection of license fees. Section 46-5-19, N.M.S.A., 1953 Compilation, requires the chief of the Division to collect the applicable license fee and immediately remit the fee to the State Treasurer.

The State Treasurer places all liquor license fees in the "Liquor Control Receipt Fund". Section 46-8-1, N.M.S.A., 1953 Compilation.

The only permissible transfer from this fund is the amount transferred to the "Division of Liquor Control Administrative Fund" created by Section 46-8-4, N.M.S.A., 1953 Compilation. All other amounts, pursuant to Section 46-8-6, N.M.S.A., 1953 Compilation, are required to be transferred at the end of each month to the State General Fund. There is no express authority for establishing suspense accounts, refunding license fees, or doing anything else with the money other than paying it into the State General Fund.

Article IV, Section 30, Constitution of New Mexico, prohibits the payment of money out of the state treasury except where there has been an appropriation by the legislature. There has been no such appropriation with respect to liquor license fees.

Therefore, in our opinion, a liquor license fee cannot be refunded to the applicant even though the license is denied.

By: Norman S. Thayer

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