

Opinion No. 63-89

August 5, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Lee S. Garner, Director Cattle Sanitary Board P.O. Box 1296 Albuquerque, New Mexico

QUESTION

QUESTION

May old checks issued by the Cattle Sanitary Board on its own bank account, which are still outstanding be cancelled under the 1963 Warrant Cancellation Act?

CONCLUSION

No.

OPINION

{*195} ANALYSIS

During the 1963 Legislative session a Warrant Cancellation Act was enacted as Chapter 233. Section 11-2-43.1, et seq., N.M.S.A., 1953 Compilation (P.S.). This Act provides that "Whenever any **warrant** issued by the state, county, municipality, school district or special district is unpaid for one year after it becomes payable, the fiscal officer shall cancel it." (Emphasis added). It further provides that when the warrant is cancelled the "indebtedness evidenced thereby is extinguished."

The Act just mentioned applies only to warrants; it does not apply to checks. A warrant and a check are not synonymous. In fact there is quite a distinction {*196} between these types of instruments, one of the most notable being that a check is a negotiable instrument while a warrant is not. **School Dist. 47 Joint, Columbia County v. U.S. National Bank of Portland**, 187 Ore. 360, 211 P.2d. 723.

Since checks and warrants are different types of instruments, and since the Warrant Cancellation Act refers only to warrants, we must conclude that this Act does not grant authority to cancel outstanding checks.

We might mention that the Uniform Commercial Code, Section 3-605, provides for the cancellation of instruments under certain conditions. However, this provision states that cancellation without surrender of the instrument does not affect the title thereto. We see then that this provision is of no use to you since the checks which you desire to cancel are not in the Board's possession.

You might wish to consider using the following procedure as a practical partial solution. Send a notice to each payee of a check issued by the Board, which check is over one year old, advising the payee that if the check is not presented for payment within thirty days a "stop payment order" will be directed to the bank. However, since there is a charge for a stop payment order, the Board will have to determine whether this approach is financially feasible.

By: Oliver E. Payne

Assistant Attorney General