

Opinion No. 64-154

December 23, 1964

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

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

QUESTION

QUESTION

May the Commissioner of Motor Vehicles assess an administrative fee to defray costs of handling and mailing annual motor vehicle registration applications and evidence of registration to motorists?

CONCLUSION

Yes.

OPINION

ANALYSIS

Your question arises from the fact that the Department of Motor Vehicles is assessing and collecting a fee of twenty-five cents for mailing annual motor vehicle registration applications and evidence of registration to motorists. A review of the applicable statutes, particularly Section 64-3-12, N.M.S.A., 1953 Compilation (P.S.) discloses that the Commissioner must annually require the registration of motor vehicles, and as an incident thereof is required to issue to owners of motor vehicles such plate or decals as he may so designate. This function is performed in part through appointed agents or designated employees, as required by Section 64-2-18, N.M.S.A., 1953 Compilation (P.S.). Fees and taxes which the Department of Motor Vehicles is authorized to assess and collect as an incident to titling and registration are expressly outlined in Section 64-11-1 through 64-11-15.2, N.M.S.A., 1953 Compilation. These Sections do not provide for the collection of an administrative fee. However, the 1963 regular session of the legislature enacted Section 64-2-20, N.M.S.A., 1953 Compilation (P.S.), which reads as follows:

"The Commissioner is authorized **to establish by rule or regulation, a schedule of administrative service fees to be collected by the agents or assigned division employees, to defray the costs of operation of the agents' or employees' offices and of rendering service to the public.** Fees shall be not less than twenty-five cents (\$.25) nor more than fifty cents (\$.50) for each item or transaction handled by the

agent or assigned division employee for the commissioner and **shall be collected in addition to all other fees and taxes imposed.** In establishing the amount of the fee to be collected for the item handled or service rendered, the commissioner shall take into consideration the complexity of the transaction and the time and effort necessary on the part of the agent or assigned employee handling the transaction. All sums collected by an agent or assigned employee as administrative service fees shall be remitted to the division as provided in section 64-2-19, New Mexico Statutes Annotated, 1953 Compilation. Administrative service fees remitted by assigned division employees shall be retained by the division of motor vehicles, and placed in the motor vehicle administrative inspection fund. If the agent is a paid official of any county or municipality, the administrative service fees shall be remitted to the division and thereafter such amount shall be paid by the division into the general fund of the county or municipality and shall be disbursed in the manner provided by law for general purposes. (Emphasis added)

Prior to the enactment of this section by the last regular session of the legislature, only agents appointed by the Commissioner were authorized to collect administrative fees, generally assessed as notary fees for affixing their seal to any number of documents, of which each affixation constituted a transaction. No maximum or minimum limitations were imposed and each agent arbitrarily designated transactions and set fees. Funds derived from fees collected were retained by appointed agents without accounting to the state. This resulted in the assessment of excessive fees without relationship to the work performed. The last regular session of the legislature in enacting Section 64-2-20, supra, acted to curtail the practices described herein and vested the Commissioner of Motor Vehicles with authority to establish fees by rules and regulations to defray the costs of operation of field offices. By providing for an administrative inspection fund in Section 64-2-20, supra, its intent was obviously to channel administrative fees into an administrative inspection fund to defray costs of operating the field offices of the department. The power of the Commissioner of Motor Vehicles is subject to the limitation that no fee of less than twenty-five (\$.25) nor more than fifty (\$.50) be collected, taking into consideration the complexity of the transaction and the time and effort necessary to handle each transaction. The legislature left it to the discretion of the Commissioner to determine "what constitutes an item or transaction," and expressly authorized him to collect administrative fees, **in addition to all other fees and taxes imposed.** In providing for an administrative fee in addition to all other fees and taxes imposed, the legislature was referring to fees and taxes mentioned in Section 64-11-1 through 64-11-15.2, supra, as there are no other fees provided for in the statutes that can be collected as an incidence to titling and registration. Based upon the foregoing analysis, the only logical conclusion is that the legislature meant to authorize the Commissioner to collect an administrative fee in addition to all other fees provided for in Section 64-11-1 through 64-11-15.2, supra. Our conclusion, therefore, based upon the Statutes discussed above, is that the Commissioner of Motor Vehicles has authority to establish what constitutes an item or transaction and to collect an administrative fee to defray costs of operation and of rendering service to the public subject only to the limitation discussed above.

The sole question left for determination is whether the Commissioner of Motor Vehicles acted within the provisions of Section 64-2-20, supra. The transaction designated by the Commission in this instance entails the completion of an annual registration application, which includes all relevant information for the registration of a vehicle. It is subsequently stuffed in envelopes for mailing to a motorist along with a preaddressed and stamped envelope addressed to the Department. All of these acts constitute a transaction for which an administrative fee of twenty-five (\$.25) is collected and motorists obtaining their registrations through the mails or at local license plate distribution offices are rendered the service by the Department of Motor Vehicles. Fees obtained from this source are placed in the motor vehicle administrative inspection fund to defray costs of operation of the agents or assigned division employees as provided for in Section 64-2-20, supra. The decision of the legislature to create an administrative inspection fund was apparently for the purpose of defraying costs of operating field offices without the necessity of appropriating funds for their operation. Section 64-2-18, N.M.S.A., 1953 Compilation (P.S.) vested the Commissioner with authority to appoint agents or employees to collect fees and revenues and to issue licenses or permits in areas where no regular state offices are maintained.