

Opinion No. 67-129

October 31, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Earl E. Cooper Executive Director State Bar of New Mexico Supreme Court
Building Santa Fe, New Mexico

QUESTION

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May the New Mexico State Treasurer credit the proceeds of investments of the State Bar Fund to the General Fund?

CONCLUSION

No.

OPINION

{*205} **ANALYSIS**

The "State Bar Fund" was created in 1925 by what is now Section 18-1-24, N.M.S.A., 1953 Compilation. Under this Section of the New Mexico Statutes the secretary-treasurer of the board of commissioners of the New Mexico State Bar must deposit all license fees received from members of the state bar with the state treasury. Section 18-1-24, supra, further provides that:

"The state treasurer shall keep said moneys in a separate fund to be known as the "State Bar Fund", and all moneys in said fund are hereby reappropriated out of the treasury of the state of New Mexico for the use of the board of commissioners of the state bar in carrying out the functions, duties and powers vested in said board by law, said moneys to be disbursed on the order of the board. . . ."

Thus it is seen that the dues of the attorneys of this state must be deposited with the state treasurer in a special fund. It is our opinion that the bar dues so deposited are held in trust by the state treasurer. The state treasurer now wishes to invest the money in this fund and then credit the proceeds of the investments to the State General Fund which in turn may be appropriated for other purposes by the legislature.

Section 11-2-25.1, N.M.S.A., 1953 Compilation provides as follows:

"Declaration of policy. -- All moneys of the state, except permanent funds and income derived therefrom and those funds the investment of which is otherwise authorized by

law, not needed to meet expenses of state government for the ensuing quarter year should be invested in interest-bearing time deposits or short-term United States government securities. No funds other than those necessary to meet expenses should be permitted to remain in noninterest-bearing accounts in state depositories."

From the section we see that it is the duty of the state treasurer to invest money not needed to meet expenses of state government which would include the moneys deposited in the State Bar Fund. We can find no statutory or constitutional directive, however, governing the disposition of the interest from the money so invested. Since we can find no statutory authority, we must look elsewhere for authority to answer the question asked.

Our research indicates that the rule in the absence of statutory or constitutional authority is as follows:

"Where moneys of the state have been deposited, lent or invested, whether with or without authority, and earn interest, such interest is the property of the state. **Interest earned by a deposit of special funds is an increment accruing thereto, and not to the general funds of the state.** (Emphasis added). 81 C.J.S. 155, p. 1192.

It is the opinion of this office that the money deposited in the State Bar Fund is a deposit of special funds and the interest earned by the state treasurer on these deposits is an increment accruing to the State Bar Fund and not the general funds. The interest earned should therefore be credited to the State Bar Fund and not the general fund. This conclusion is further reinforced in the present case by the fact that the State Bar Fund is a trust fund and under basic trust law interest earned by the trust must accrue thereto. We wish to point out, however, that interest earned on any appropriation made by the legislature to the {*206} state bar must be credited to the general fund and not to the state bar.

By: Gary O'Dowd

Assistant Attorney General