

Opinion No. 67-17

February 1, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Philip T. Manly Counsel New Mexico Legislative Council Legislative Executive Building Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Under the provisions of the Highway Beautification Act (Laws 1966, Chapter 65), is the State Highway Commission's billboard licensing authority limited by Section 55-11-5C, N.M.S.A., 1953 Compilation (1966 Interim Supplement), or may it require payment of license fees for all existing billboards located within 660 feet of the interstate and primary highway systems?
2. If the State Highway Commission's licensing authority is limited by Section 55-11-5C, supra, may the owner of a billboard not required to be licensed obtain a refund of permit fees paid to the Commission?

CONCLUSIONS

1. Such authority is limited.
2. Only if there is a refund suspense fund.

OPINION

{*22} ANALYSIS

Section 55-11-2, N.M.S.A., 1953 Compilation (1966 Interim Supplement) defines Interstate System and Primary Systems as they relate to the Highway Beautification Act.

Section 55-11-4, supra, provides that:

"No outdoor advertising shall be erected or maintained within six hundred sixty feet of the nearest edge of the right of way, and visible from the main-traveled way, of the interstate or primary systems"

Following this are listed five exceptions to this prohibition. And the final paragraph of Section 55-11-4, supra, states that if a sign is excepted from the 660 foot requirement a

permit must be obtained therefor as provided in Section 55-11-5, N.M.S.A., 1953 Compilation (1966 Interim Supplement). This latter section provides that:

"The Commission may establish and collect fees for the issuance of permits for outdoor advertising authorized by the **exceptions** specified in [Section 55-11-4]."

You state in your inquiry that a legislator advises that the State Highway Commission is charging fees and requiring permits for all billboards located within any 660-foot area. If this is in fact the case, the procedure is erroneous. The only statutory authority to charge fees is for the five exceptions contained in Section 55-11-4, supra.

Refunds from suspense funds must be based on statutory authorization.

By: Oliver E. Payne

Deputy Attorney General