

## **Opinion No. 67-98**

August 7, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Honorable Luis G. Encinias State Representative San Miguel County /- District 2  
1007 South Pacific Street Las Vegas, New Mexico

### **QUESTION**

#### **FACTS**

For years the Department of Motor Vehicles has maintained a regular state-supported office in Las Vegas. Recently, the Commissioner of the department appointed a fee agent for Las Vegas in addition to the regular employees who are to remain in Las Vegas on the department's payroll.

After the agent was appointed the office personnel was instructed to collect a fifty cent fee for each transaction handled in addition to the regular fee imposed by law. The fifty cent fees collected for the issuance of motor vehicle registration plates and matters connected therewith were to be remitted to the division along with regular fees and later reimbursed to the agent; and the fifty cent fees collected on transactions for issuing operator's and chauffeur's driving permits or licenses and matters connected therewith to be turned over to the agent as fees for acting as fee agent. These fees are not shown in the regular office receipts issued to persons securing licenses or permits.

#### **QUESTIONS**

1. Is the fee agent herein mentioned legally entitled to receive administrative service fees provided in Section 64-2-20, N.M.S.A., 1953 Compilation (P.S.), when the Department of Motor Vehicles maintains a state-supported office in Las Vegas and pays the cost of office operation and the salaries of the employees who render service to the public?
2. Do New Mexico laws authorize and empower the Commissioner of the Department of Motor Vehicles to appoint or assign agents or employees on a fee basis in counties, communities, or areas where regular state-supported offices are maintained to act for him in carrying out the duties imposed upon him by law in the performance of the following functions:
  - a. To receive applications for motor vehicle registrations, to issue plates or other evidence that vehicles have been properly registered, and to collect prescribed fees and revenues for these services and to cover administrative fees for rendering said services?

b. To receive applications for permits or licenses to operate or drive motor vehicles (operator's and chauffeur's licenses), to issue these licenses or permits, and to collect fees and revenues imposed by law for these services and to cover administrative fees for rendering said services?

## CONCLUSIONS

1. No.
2. No.

## OPINION

### {\*143} ANALYSIS

The only authority that the Commissioner of the Department {\*144} of Motor Vehicles has to appoint an agent as opposed to a salaried employee to act in his behalf to carry out his legal duties is found in Section 64-2-18, N.M.S.A., 1953 Compilation (P.S.). This power of appointment is restricted to ". . . counties, communities or areas where the commissioner maintains no regular state-supported office . . ." Section 64-2-20, N.M.S.A., 1953 Compilation (P.S.) provides for an administrative service fee which is to be established by rule or regulation of the commissioner. An agent, as opposed to an assigned division employee appointed under the authority of Section 64-2-18, who is not a paid official of any county or municipality, is entitled to the established service fee. However, all money collected by agents or assigned division employees, including administrative service fees, must be remitted to the commissioner. The service fee that goes to the agent is then remitted, after an audit and acceptance of the agent's reports, corresponding to such fees, as being complete and correct to the satisfaction of the commissioner.

Assuming that the facts set forth above, taken from your letter, are true, it is our opinion that the agent you describe is not authorized by Section 64-2-18, and is not entitled to the administrative fee authorized by Section 64-2-20. This conclusion is based on the fact that there is a regular state-supported office in Las Vegas to handle the duties of the commissioner. In addition, even if the agent were duly authorized, the method of payment described in your opinion request is patently illegal because both Sections 64-2-19 and 64-2-20 require that all moneys collected be remitted to the commissioner.

Your second question regarding agents was answered in the above discussion. It is not proper to appoint an agent or use assigned division employees where a regular state-supported office is located. It is proper where there is no state-supported office only if the commissioner deems it necessary to effect economy in carrying out the function of his division and for providing necessary services to the people of this state.

Insofar as your second question relates to fees and state employees, Attorney General Opinion No. 64-154, dated December 23, 1964, is important. In that opinion this office

ruled that the Commissioner of Motor Vehicles could, under the authority of Section 64-2-20, assess an administrative fee to defray the costs of handling and mailing annual motor vehicle registration applications and evidence of registration to motorists in his field office.

By: Roy G. Hill

Assistant Attorney General