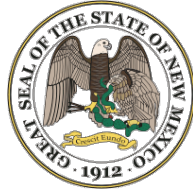


STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

August 18, 2021

Ken Miyagishima
Mayor, City of Las Cruces
Las Cruces City Hall
700 N. Main St
Las Cruces, NM 88001

Re: Opinion Request – Legality of issuing a duplicate check in 2021 for a check that was originally issued, but never cashed, in the year 2000

Dear Mayor Miyagishima:

You requested our opinion regarding the legality of the City of Las Cruces (City) issuing a duplicate for a check that was initially issued on May 2, 2000. The facts provided in your request indicate that the original check was issued to Mrs. Barbarah Wilbanks, DBA, whose company provided behavioral health services for the City from 1993-2002. Further, you indicate that she discovered the uncashed check in 2009 upon closing her business. Finally, you point out that the City could not conclude what happened to the check and that you believe that the check was never cashed by Mrs. Wilbanks. Mrs. Wilbanks subsequently advised our office that the “original (check) was returned October 2010” and that, upon return of the check, she provided a written request for re-issuance.¹ Additionally, Mrs. Wilbanks advised that the funds have never been designated unclaimed property, so the City remains the custodian of the funds. Accepting those facts, in particular that Mrs. Wilbanks was never paid for services rendered and that the funds were not designated unclaimed property, the City could issue a duplicate check, as outlined below.

Typically, unclaimed money owed to an individual on behalf of a municipality would be sent to the state as unclaimed money pursuant to NMSA 1978, Section 7-8A-2(A)(12) (2007), which outlines that wages or other compensation for personal services are presumed abandoned one year after the compensation becomes payable. To claim the payment as unclaimed property, Mrs. Wilbanks would have been required to file a claim with the administrator pursuant to NMSA 1978, Section 7-8A-15 (1997), thereby asserting her interest in property that was deemed abandoned. In this case, however, you indicate that efforts to determine that the check

¹ Mrs Wilbanks provided an email to the Office of the Attorney General on July 26, 2021, wherein she elaborated on the facts and circumstances described in the initial request for opinion from the City.

had been turned over to the State as unclaimed property were unsuccessful and Mrs. Wilbanks has provided that the funds were not designated as unclaimed property, which leaves the City to explore the issuance of a duplicate check.

Even if the money owed to Mrs. Willbanks was not sent to the state as unclaimed money as outlined above, the debt to Mrs. Willbanks for services provided is not eliminated because she did not cash the check in a timely manner. *See* N.M. Atty. Gen. Op. No. 80-15 (1980) (holding that indebtedness evidenced by an underlying contract is not extinguished for failure to cash a check within one year of its payable date). The provisions of NMSA 1978 Section 6-10-59 (1965) indicate that the legislature enacted provisions for the issuance of duplicate checks as needed despite an obligation of fiscal agents to cancel those checks which were not cashed in a timely manner. *Id.* In pertinent part, Section 6-10-59 explains that:

“In case of the loss or destruction of any warrant, draft, check or order for the payment of money out of the treasury of the state, or of any political subdivision of the state, the officer who drew the original instrument, or his successors in office, shall issue a duplicate as provided in Section 6-10-60 NMSA 1978.”

NMSA 1978 § 6-10-59 (1959). As noted above, NMSA 1978 Section 6-10-60 (1977) provides for the process of re-issuing checks, including the requirement that the party applying for a duplicate file with the fiscal agent of the political subdivision “an affidavit which shall state that the original check has been lost or destroyed or was never received.” In this case, Mrs. Wilbanks would be required to file an affidavit that the check was lost when requesting that the successors in office of those who originally issued the check issue a duplicate check.

Finally, the City does have the ability to control the payment of debts of the municipality. *See* Section 3-37-2 (1965) NMSA. Consistent with this statute, New Mexico Courts have held that municipalities have an obligation regarding those debts which it incurs. *See Barker v. State ex rel. Napoleon*, 1935-NMSC-067, 39 N.M. 434, 49 P.2d 246, 250 (holding that, where a municipality incurs in contract any liability whether arising from express legislation, or by implication, it cannot escape such liability unless relieved therefrom by some valid provision of law).

In summary, as long as Mrs. Wilbanks was never paid for services rendered to the city, the obligation of the City has not ceased, and the City could therefore issue a duplicate check for the services rendered pursuant to her contract as outlined above. Please note that this opinion is a public document, available to the general public. As such, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,



Steve Romero
Assistant Attorney General