

Opinion No. 23-3660

January 11, 1923

BY: MILTON J. HELMICK, Attorney General

TO: Requested by: Soledad C. Chacon, Secretary of State, Santa Fe, New Mexico.

The State Is Not Bound by the Laches of an Officer in Failing to Use Due Diligence in the Presentation of a Check for Payment.

OPINION

{*5} Cashier's check No. 9136 being in the amount of \$ 10.80 issued by the First National Bank of Magdalena, was mailed on November 8, 1922 to the Secretary of State, by a citizen of this state, in payment of 1923 automobile license. The bank closed its doors on December 27th 1922. The Cashier's check had never been presented and was found in the office when the present Secretary of State qualified. The question arises on the demand of the citizen that a license be issued because the Cashier's check was held by the former Secretary of State for a period of forty-nine days, and that the loss due to negligence in presenting the check for payment should fall upon the payee.

{*6} If this were a transaction between private individuals I would have no hesitancy in advising that this contention correctly states the law, but since one party to the transaction is the State of New Mexico, I think it is clear that a different rule applies. The Cashier's check was made to the Secretary of State not as an individual, but as an officer of the state, and the state is in fact the payee.

Nothing is better settled in the law than the rule that the rights of a sovereign state cannot be lost by the laches of its agents, and that a sovereign state is not bound by the errors, negligence and mistakes of its officers in making settlements in its behalf. There are a multitude of authorities on this point, a few typical ones are:

Haehnlen vs Commonwealth, 13 Penn. State, 617.

U. S. vs. Kirkpatrick, 9 Wheat. 720.

26 Am. English Enc. 480.

Long vs. McDowell, 170 Ky. 14.

I am forced to the conclusion that the citizen mentioned is not entitled to the automobile license.