

Opinion No. 23-3693

April 13, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. W. B. Wagner, Deputy for Insurance, Santa Fe, New Mexico.

Escrow Funds in the Hands of Insurance Department Must be Deposited With the State Treasurer.

OPINION

{*42} Your inquiry: The Insurance Department of the State Bank Examiner's office is holding in escrow certain monies pending the settlement of a suit in the Supreme Court wherein the state is appellant. This department would appreciate an opinion from your office as to whether, under the law, this money should be deposited with the State Treasurer in a suspense account or be held in escrow by the State Bank Examiner.

We think the law, as set out in Section 2 of Senate Bill No. 67, approved March 9, 1923, requires that all such funds shall be deposited with the State Treasurer "forthwith and before the close of the next succeeding business day after the receipt thereof."

Section 2 of said bill provides:

"That every official or person in charge of any state agency receiving any monies, except as hereinafter in section 23 provided, in cash or by check, draft or otherwise, in escrow, or in evidence of good faith to secure the performance of any contract or agreement with the State of New Mexico, or with any department, institution or agency of the State of New Mexico, which said monies shall have not yet been earned so as to become an absolute property of the state, shall deliver or remit to the State Treasurer within the time and in the manner hereinbefore in this section provided, which monies shall be by said State Treasurer deposited in a suspense account to the credit of the proper official, person, Board or Bureau in charge of any state agency so receiving said monies."

{*43} Section 22 of said Senate Bill No. 67 provides:

"Whenever it shall be finally determined that any monies so deposited in a suspense account shall be returned unpaid or refunded to the person, firm or corporation from whom the same were received, such monies shall be paid out of the suspense account of the state Treasurer upon a warrant drawn by the State Auditor based upon a voucher from the state official, or agency as the case may be."