

## Opinion No. [29-47]

October 31, 1929

**TO:** Office of the Attorney General of New Mexico

MOTOR CARRIERS -- Cost of collecting mileage tax to be paid from State Corporation Commission Motor Vehicle Fund.

Chapter 129, Laws 1929.

### OPINION

This will acknowledge receipt of your letter of October 30 enclosing a copy of a letter from J. A. Baca, Commissioner, Motor Transportation Department, and requesting an opinion from this office as to the legality of a plan proposed by which plan the Motor Transportation Department would pay the salary of a field deputy employed in collecting the mileage tax provided for by Section 7 of Chapter 129, Laws of 1929, the traveling expenses of such field deputy to be paid by the State Highway Department.

Upon the State Corporation Commission, of which the Motor Transportation Department is a department, is imposed the duty of collecting these taxes. "It is hereby made the duty of said commission to collect all charges provided for in this act and said commission is hereby vested with all authority . . . ." (Sec. 8)

All monies collected by the Corporation Commission under the terms of the Act are to be remitted to the State Treasurer whose duty it is to cover 12 1/2% of such monies into a special fund to be known as the "State Corporation Commission Motor Vehicle Fund." The monies in the "State Corporation Commission Motor Vehicle Fund" shall be used to defray the expenses of the performance by said Corporation Commission of the duties imposed on it under the provisions of the Act. (Sec. 9.)

Section 43 of that Act is as follows:

"The Corporation Commission is hereby authorized to employ, and pay from the Funds, such inspectors, clerks, assistants, deputies and other help as may be necessary to enable said Commission to efficiently discharge the duties imposed upon them hereby.

"There is hereby appropriated for the use of the State Corporation Commission in defraying the expenses incident to the discharge by the said Commission of the duties hereby imposed upon it, the following funds; provided, however, that said appropriations shall be payable only from the State Corporation Commission Motor Vehicle Fund, to-wit: For the remainder of the 17th fiscal year the sum of \$ 2,500.00 and for each of the 18th and 19th fiscal years the sum of \$ 12,500.00."

It is provided by the Constitution of the State of New Mexico, Article IV, Section 30, that,

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied."

You do not say what fund at the disposal of the State Highway Department is proposed to be used in the payment of traveling expenses of a field deputy of the State Corporation Commission, Motor Transportation Department, nor does it appear to me probable that the possession of such information would lead to a different conclusion. Unless the fund proposed to be drawn upon would fall within the definition of a State fund as that term is used in Section 5332 of the Codification of 1915, such section would be without application. However, that section reads as follows:

"Sec. 5332. The moneys expended out of the Contingent or Traveling Expense Fund appropriated for the use of State officials, shall be paid only upon receipted vouchers showing the items for which such moneys were expended, said vouchers to be verified by affidavit and filed in the office of the State Auditor. Provided, no money shall be used or diverted from any State fund, or other contingent or miscellaneous expense fund of any State official, for any purpose or purposes other than as specifically authorized by law."

Section 5333, in prescribing the duties of the State Auditor, requires of him, among other things, that he shall in drawing warrants express in the body of every warrant the particular fund appropriated by law out of which the same is to be paid.

Since the duty of collecting the mileage taxes is imposed on the State Corporation Commission -- authority granted the Commission to employ deputies and other help necessary to enable the Commission to efficiently discharge such duties -- specific appropriation and provision made for the State Corporation Commission Motor Vehicle Fund to be used to defray the expenses of the performance by said Corporation Commission of the duties imposed on it by the Act and in consideration of the limitations contained in other statutes above quoted, I am of the opinion that all of such expense should be paid from the State Corporation Commission Motor Vehicle Fund.

If there is any other fund at the disposal of the State Highway Department from which such payment could be made the appropriation of money for such purpose would have to contain language including such expense within the appropriation measure. I am not aware of any appropriation at the disposal of the State Highway Department broad enough to cover this item.