

Opinion No. [30-105]

August 9, 1930

TO: Office of the Attorney General of New Mexico

STATE TREASURER -- To pay out money only as appropriated.

OPINION

Reference is made to yours of the 7th inst. with which you submitted a letter from John E. Ethell, attorney for the administrator of the estate of Hannah Berntsen, deceased, and which letter is herewith returned to you.

Mr. Ethell, it appears, is requesting from you a refund of \$ 137.03 paid as a succession tax by the said estate basing his claim on an interpretation of the statute and the alleged fact that the property was community property and passed to the surviving husband by operation of law being under the holding of our Supreme Court in the case, State vs. Chavez, 280 Pacific 241.

Whatever may be the merits of this claim we are not advised, neither do we know how it happened that this payment was ever made. Presumably it was made with the approval of the court. However, your attention is directed to section 30, Article IV of the State Constitution, which provides:

"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. . . ."

In our opinion, money received by you and entered upon your books can only be paid out as specified in the section of the Constitution above mentioned. If a mistake has been made and this money should be refunded, the proper procedure for Mr. Ethell would be to appear before the next legislature and convince that body of his rights and secure the passage of a bill appropriating the necessary amount.