

**Opinion No. [30-57]**

July 15, 1930

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

MOTOR CARRIERS -- Disposition of fees, Chap. 129, Laws of 1929.

**OPINION**

Re: Chapter 129, Session Laws 1929.

I have before me yours of the 10th inst. in which you ask for an opinion as to the disposition to be made of fees collected by the State Corporation Commission under the provisions of the Motor Carrier Act, that is, Chapter 129, Session Laws of 1929.

Section 7 (E) of the act is as follows:

"Every such motor carrier which has during any calendar year paid property taxes in the State of New Mexico upon any motor vehicle so used over the highways in this State may apply the property taxes so paid as a credit against and deduct the amount thereof from the charges against such motor vehicle for the use of the highways by the provisions of this act."

Section 9 of the Act is as follows:

"Sec. 9. All monies collected by the Corporation Commission under the terms of this Act shall be remitted by said Commission to the State Treasurer of the State of New Mexico.

The said treasurer shall cover twelve and one-half per cent of such monies when received into a special fund to be known as the 'State Corporation Commission Motor Vehicle Fund'.

The monies in said 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 this act, and shall be paid out for that purpose upon warrants executed by the State Auditor pursuant to vouchers drawn against said fund by said Corporation Commission; **Provided, however**, that any surplus remaining in said fund at the end of any fiscal year shall be transferred into and credited to the State Road Fund."

By section 43 of the Act, appropriations were made out of this fund, to-wit:

For the remainder of the 17th Fiscal Year the sum of \$ 2,500 and for each of the 18th and 19th Fiscal Years the sum of \$ 12,500."

We thus see that the legislature has required that all monies collected under the terms of this act are to be turned over to the State Treasurer; that of the amount so turned over twelve and one-half per cent is set up as the State Corporation Commission Motor Vehicle Fund; that appropriations have been made from that fund, as above set forth, and that any balance remaining the fund at the end of a fiscal year is to be transferred into and credited to the State Road Fund.

The next question to be considered is the disposition of the remaining eighty-seven and one-half per cent of the monies collected under the provisions of Chapter 129.

From the language of section 7 (E) above quoted, as well as from the transferring of any unused balance in the State Corporation Commission Motor Vehicle Fund to the State Road Fund, the implication is strong that it was the intent of the legislature that all monies collected under this act and not expended in the performance of the duties imposed were intended for the State Road Fund although the act nowhere specifically so provides.

By section 1 of Chapter 154, Laws of 1919, now appearing as Section 64-316, Codification of 1929, it is provided that "All of the net revenue derived from the licensing of motor vehicles under any law now in existence or that may hereafter be enacted, and all penalties that may be collected under any such law, shall also be paid over to the State Treasurer and covered into the State Road Funds."

In our opinion the certificates of necessity and convenience provided for in Chapter 129, Laws of 1929, constitute a licensing of motor vehicles and the monies collected under that chapter are monies derived from the licensing of motor vehicles and are to be paid over to the State Treasurer and covered into the State Road Funds, except, of course, in so far as affected by subsequent legislation, such as that contained in the Motor Carrier Act by which twelve and one-half per cent of the monies collected, or so much thereof as has been appropriated and made available for the enforcing of the act and carrying out of its provisions.