

Opinion No. 33-610

June 27, 1933

BY: E. K. NEUMANN, Attorney General

TO: Honorable Arsenio Velarde, Secy., State Board of Finance, Santa Fe, New Mexico.

{*59} Regarding the request of the State Board of Finance for a ruling upon the question raised by the State Comptroller in regard to Section 6 of Chapter 169, Laws of 1933, relating to the disposition of the fees collected by the Motor Vehicle Department for the registration of motor vehicles.

Said Section, after allowing 10% of the gross fees collected for and as funds for the Motor Vehicle Department to administer the Motor Vehicle Laws of this state, disposes of the balance as follows:

- (1) 25% thereof to the State road fund;
- (2) 15% thereof to the counties proportionately for their respective county road funds;
- (3) 15% thereof to the state general fund;
- (4) 25% thereof to the counties proportionately to be distributed in such counties as provided in said act.

It immediately becomes apparent that said act disposes of only 80% of the fund, leaving a balance of 20% undisposed of. In all previous acts, or at least in the 1931 act, said 20% was disposed of to the state road fund, and, apparently it was only through error that the same disposition thereof was not made by the 1933 Act.

It is a general rule that any moneys coming into a state department and of which there is no legislative disposition, such moneys become state funds and must be credited to the general fund. This rule would probably control the present situation, in so far as the disposal of the 20% mentioned is concerned were it not for other circumstances which probably alter the rule.

The various state highway debenture acts, under which such debentures have been issued and are now outstanding, provide uniformly as follows:

- (a) "The State Highway Commission * * * is hereby authorized to anticipate the proceeds of the collection of any or all of the motor vehicle registration fees * * * to the extent to which it is provided by law that the proceeds of the collection of such fees * * * shall be covered into the state road fund * * *."

b. "The issue and sale of said debentures shall constitute an irrevocable contract between the State of New Mexico and the owner of any of said debentures {*60} that the fees * * * pledged * * * at the rate now provided by law, shall not be reduced as long as any shall remain outstanding * * *."

Since 1931, at least, that part of the funds apportioned to the state road fund, which is pledged to pay debentures, has been 45% of the amount remaining after deducting 6% of the gross receipts for administrative expenses.

It is my opinion, that the 20% of the motor vehicle fees not disposed of by the 1933 Act must go into the state road fund, for 45% of said receipts, less administrative costs, are pledged to pay the state highway debentures outstanding. Any other administration of the fund would probably cause the entire provision to violate that section of the Constitution which prohibits laws impairing the obligation of contracts. (Sec. 19, Article 2, N.M. Constitution). Certainly the provisions of the various highway debenture acts, herein above quoted, constitute a contract between the state and the holders of said debentures.

It might be said that the fund has been impaired by deducting 10% of the gross receipts for administrative costs, before disposition of the balance, because of the fact that the former laws provided for only 6% thereof to be expended for such costs. I doubt that this contention could be correct, for reason that a sufficient sum must be set aside to defray the cost of enforcing the motor vehicle laws, in order that any of the fund might be created. If it became apparent to the legislature that more than 6%, as provided under the older law, were needed for such purpose, I believe it could, as it did, provide for a greater expenditure for such purposes to the end that the law, properly enforced and administered, would bring in the greatest revenue possible to augment the fund created.