

Opinion No. 37-1607

April 20, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. Murray A. Hintz Finance Director Department of Public Welfare Santa Fe, New Mexico

{*77} This is in answer to your letter of April 17 wherein you inquire {*78} whether it is legal for the widow of a deceased person to endorse a check, drawn in favor of the deceased husband, with his initials and name, and to cash it.

By this I presume you mean to inquire whether your bank was authorized to honor a check so endorsed. There is no statute in New Mexico authorizing such a transaction. In the absence of statute, the rule is that,

"A bank is authorized to pay only to the person designated by the depositor". 7 C. J. 686.

And,

"The death of the payee of a check to whom the drawer has sent it, before it reaches its destination, does not enlarge the rights of the drawee in regard to payment. Nor does his death, unknown to the drawer, before the check is drawn, enlarge the drawee's rights. In such a case, the check is either payable to no one, or it may be collected by the executor or administrator, according to the circumstances attending the making and delivery of it." **Murphy vs. Metropolitan Nat. Bank**, (Mass.) 77 N. E. 693.

As to the general rule on this subject, see also **State vs. First National Bank of Albuquerque**, 38 N.M. 225.

I presume this was a check for which no consideration passed, and you say it was expressly stated in the check that it is null and void if the payee was not alive on the day as of which it was issued. Under those circumstances, if the payee was dead, it cannot be honored by the bank, even though presented by the personal representatives of deceased.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.