

Opinion No. 37-1661

June 3, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. J. O. Garcia State Auditor Santa Fe, New Mexico

{*110} This is to acknowledge receipt of your letter of May 21 in which you request an opinion as to how funds collected from the special tax levies made for the cattle indemnity fund, hog cholera fund and sheep indemnity fund should be disbursed. You state in your letter that these funds are disbursed monthly by you to the respective boards handling these funds, instead of upon warrants issued on approved vouchers.

The hog cholera fund is provided for in Section 4-1213, New Mexico Statutes Annotated, 1929 Compilation. This act specifically provides that monies in such fund shall be paid out upon warrants or orders drawn upon the State Treasurer by the Cattle Sanitary Board. No authority is therefore vested in you to disburse this sum monthly to the board, but must be paid out as provided by the act and upon proper vouchers as provided for in Section 112-124, New Mexico Statutes Annotated, 1929 Compilation.

Section 4-1640 provides for a special tax levy on sheep, and provides that such money shall be paid to and kept separately by the State Treasurer and shall be paid out by him on the order of the board only. No further provision is made for the disbursement of these funds. Such being the case, it is our opinion that expenditures or payments out of this fund can be made only upon warrants drawn against itemized vouchers as provided in Section 112-124, supra.

The distribution of monies in the cattle indemnity fund presents a question calling for a construction of the various statutes relating thereto. Section 4-814, New Mexico Statutes Annotated, 1929 Compilation, the same being Section 1 of Chapter 157 of the Laws of 1929, provides for a special levy by the county commissioners, and further provides that all monies collected by such levy shall be kept in a separate account by the Treasurer and paid out by him on the order of the Cattle Sanitary Board for purposes enumerated therein. Section 4-815, the same being Section 2 of Chapter 157 of the Laws of 1929, provides in general for a levy by the State Auditor upon the report of the Cattle Sanitary Board. The 1929 act was passed after the passage of Section 4-816, the same being Section 2, Chapter 85 of the Laws of 1915, which section covered substantially the same subject matter as contained in Section 1 of the 1929 Act. No mention was made of Section 2, Chapter 85 of the Laws of 1915 (Section 4-816, New Mexico Statutes Annotated, 1929 Compilation), but as the matters contained therein covered the same subject matter, we believe that the section last mentioned, that is, Section 2, Chapter 85 of the Laws of 1915, was repealed by implication.

{*111} Section 6 of Chapter 53 of the Laws of 1933 purports to amend Section 2, Chapter 85 of the Laws of 1915 (Section 4-816, New Mexico Statutes Annotated, 1929

Compilation) which was, we think, repealed by the 1929 act above quoted. The 1929 act (Section 4-814, New Mexico Statutes Annotated, 1929 Compilation) provides that the funds collected pursuant to the special tax levy, or, in short, the cattle indemnity fund, shall be in the custody of the State Treasurer and paid out only upon the order of the Cattle Sanitary Board. If this section is in force, it is our opinion that disbursements can be made only as in cases of either disbursements of public money pursuant to the provisions of Section 112-124, supra. However, Section 6, Chapter 53, Laws of 1933, provides that the funds shall be transferred monthly to the Cattle Sanitary Board, and if it is in effect the procedure you have heretofore followed is valid.

This brings us then to the question of whether or not the amendment of a repealed act is valid legislation. There is a direct split of authority upon this question. The cases are grouped in 59 C. J., pages 852 and 853, Sections 423 and 424. However, the majority rule seems to be that the amendment of a repealed act is valid. We quote from 25 R. C. L. page 905, Section 157, as follows:

"There is a conflict of authority as to whether a section which has been repealed can be amended. The question usually arises where a section of an act is amended 'to read as follows,' and is then again amended in the same manner and by the same description, ignoring the first amendment. Most of the older and some of the more recent cases hold that such an amendatory act, or the amendment of a repealed section, is a nullity. But the decided weight of authority and the better opinion is that an amendatory statute is not invalid, though it purport to amend a statute which had previously been amended, or for any reason had been held invalid."

As there has been no decision by our Supreme Court upon this question, we are constrained to follow the majority rule above quoted, and it is therefore our opinion that Section 6 of Chapter 53 of the Laws of 1933 is valid and, being the latest legislation upon this particular subject, is controlling, and that you are authorized under the provisions of this section to disburse the money to the Cattle Sanitary Board each month as you have done in the past.

In passing, we wish to say that in the absence of a ruling by our Supreme Court, the question of how funds in the cattle indemnity fund should be disbursed is an open question, and in giving this opinion we are merely relying upon the majority rule as announced in other jurisdictions.

Trusting that this answers your questions, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.