

Opinion No. 38-1877

February 8, 1938

BY: FRANK H. PATTON, Attorney General,

TO: Hon. J. O. Walton, Attorney Bureau of Revenue Santa Fe, New Mexico

{*210} This is to acknowledge receipt of your letter of February 7, 1938. You desire an interpretation by this office of Section 8, Chapter 110, Laws of 1937, which section provides for the distribution of fees collected for drivers' licenses. You particularly wish to know if administration expenses can be deducted before allowing {*211} or distributing forty per cent to municipalities as provided by Section 8 (d).

This section is peculiarly worded. It apparently attempts to provide a priority distribution (1) for administration expenses, (2) payment to municipalities, and (3) the balance for maintenance of the State Police. However, sub-section (d) is very specific. It provides that an amount equal to forty per cent of the fee received from each and every applicant to whom license is granted shall be distributed to each incorporated municipality in which the applicant lives. As this provision is specific and plain, it is my opinion that it is controlling and that forty per cent of the fee received for each application made by a resident of an incorporated municipality must be distributed to the municipality in which the applicant lives.

However, your attention is further directed to the last sentence of subsection (d) which is just as specific in providing that the proceeds distributed to the municipalities must be used by them in maintaining an adequate police department to enforce the motor vehicle laws of this State, including the provisions of Chapter 110. This section must likewise be strictly complied with by the municipalities. The funds so received cannot be used by them for administrative purposes. They must be used strictly in conformity with the provisions of this sub-section.

It is my opinion that if such funds are diverted, the officers responsible therefor will be personally liable just as in the case of diversion of other funds.

Trusting that this answers your questions, I am

By: RICHARD E. MANSON,

Asst. Atty. Gen.