

Opinion No. 42-4099

June 4, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*205} I have your letter of June 1 relative to the distribution of taxes levied for road purposes as provided for under Section 64-802, New Mexico Statutes Annotated, 1929 Compilation.

From the facts submitted, it appears that the Treasurer of Santa Fe County has made no distribution to the City of Santa Fe as provided by Section 64-802 for the fiscal year 1941-1942, and, {*206} this being true, desires to know whether such distribution may now be deferred until the fiscal year 1942-1943.

It is my further understanding that the city officials of Santa Fe have demanded that the Treasurer of Santa Fe County make a distribution of this fund for the fiscal year 1941-42.

It further appears that the Santa Fe County Road Fund for the fiscal year 1941-1942 was determined without taking into consideration any distribution of the fund and that the county fund will be seriously curtailed if any distribution is, at this time, made as demanded by the City of Santa Fe.

Sections 64-801 and 64-802, New Mexico Statutes Annotated, 1929 Compilation, respectively provide for the levying of a tax for road purposes and the manner of distribution thereof. Section 64-802 reads as follows, to-wit:

"From and after the time this act shall take effect, the treasurer of each county shall immediately as the same are received, pay over to the treasurer of any city, town or village situate within such county thirty per centum of all moneys coming into the hands of such county treasurer and collected from or under any road tax levied for county roads under general laws on the taxable property within the corporate limits of such city, town or village, the proceeds of which tax are not pledged for the payment of certificates of indebtedness or bonds already issued, or not levied to meet the assent of the state of New Mexico to the provisions of the act of Congress, approved July 11, 1916, entitled 'an act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes,' under chapter 38 of the Session Laws of the third state legislative assembly of New Mexico."

The above section of the law is, in my opinion, crystal clear and certainly affords no grounds to resort to a construction of the same. Thirty percent of the money collected from or under any road tax levied for county roads under general laws on the taxable property within the corporate limits of the City of Santa Fe should have been paid over

to the Treasurer of the City of Santa Fe in accordance with Section 64-802, supra. This money so collected by the City may be spent for the sole and only purposes as are set forth under Section 64-803, New Mexico Statutes Annotated, 1929 Compilation, which reads as follows, to-wit:

"All Moneys received by treasurers of cities, towns and villages under this act shall be held and expended as 'street paving and improvement funds,' and for no other purposes, providing that all funds received hereunder shall be expended for street maintenance and improvement of streets in such cities, towns and villages which are extensions of the public roads and highways through or into such cities, towns and villages and that paving shall not be considered as improvements for the purposes of this act.

"And provided further that such funds may be expended upon roads within the county outside of the limits of and leading into such cities, towns and villages."

As to what effect such a distribution will at this time have on the County Road Fund, I know not, but that is immaterial. The provisions of the law should be followed and this is true regardless of whether the County Treasurer knew of such a law or not. The distribution statute, Section 64-802, supra, has been on the books for many years. Ignorance of the law excuses no one. The demand {207} of the City of Santa Fe should be complied with.

By HOWARD F. HOUK,

First Asst. Atty. General