

Opinion No. 43-4355

August 5, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable F. M. Limbaugh, State Highway Engineer, Santa Fe, New Mexico.
Attention: Mr. L. D. Wilson, Right of Way Engineer

I have your letter of July 15, 1943, wherein you request an opinion concerning distribution of monies collected for your Department by the Department of Courtesy and Information, as created by Chapter 125, Laws of 1943.

In answering these questions I call your attention to Sections 16 and 17 of Chapter 125, Laws of 1943, which provide:

Section 16. "That all monies collected for Departments of the Bureau of Revenue under the provisions of this Act, shall forthwith be remitted to the Department for which such collections are made and by them distributed in the same manner as all other collections under their respective laws."

Section 17. "For the purpose of defraying the costs of administration of this Act, the head of each Department of the State of New Mexico for which the Department of Courtesy and Information collects any taxes provided for under the law of such department, **shall transfer to the Department of Courtesy and Information a sum equal to the amount allowable to such Department for the collection of such taxes under the provisions of the law creating such Department.**" * * * (Emphasis ours).

In view of the foregoing sections all monies collected by the Department of Courtesy and Information are first remitted to the Department for which such collections are made; then the Department which receives such monies transfers to the Department of Courtesy and Information a sum equal to the amount allowable to such Department for the collection of such taxes. In cases where this is a definite percentage, such as six percent, the definite percentage would be transferred and, according to our Opinion No. 4332, which is herein inclosed, the receiving Department may, of course, also still use its specified percentage for administrative purposes. However, under a statute which provides no definite percentage, such as you call the attention of this office to, where it would be possible for the collecting Department to utilize all but 40% of the collections, the receiving Department, since it could use the entire remaining 60% and since that is the amount allowable, which, however, must be considered with the phrase "a sum equal" to the amount allowable, it would appear that it was the contemplation of the Legislature that under such a situation both Departments would share equally and neither Department should retain the entire amount. Therefore the maximum which could be transferred under such a situation to the Department of Courtesy and Information would be 30%, which would leave 30%, for the Department you refer to.

Hoping that the above fully answers your questions, I remain,

By HARRY L. BIGBEE

Asst. Atty. Gen.