

**Opinion No. 43-4380**

September 10, 1943

**BY:** EDWARD P. CHASE, Attorney General

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

We are in receipt of your letter of September 9, 1943, concerning the assignments of salary made by the former Clerk of Otero County, the letter from the Chairman of the Board of County Commissioners, and the two assignments.

I am sorry that we are not in position to give you an opinion on this matter, but we do not have sufficient facts at our disposal to reach any definite conclusion. However, as there are a great many questions raised by the letter and the assignments, I will outline briefly some of the questions involved.

The assignment by John L. Stephens to J. L. Lawson was dated the 5th day of June, 1943, the acknowledgement was shown to have been taken on May 5, 1943, the instrument filed for record on July 22, 1943. The assignment by John L. Stephens to the Otero County Bank was dated June 30, 1943. It was properly acknowledged and filed for record on July 1, 1943.

Your attention is called to Section 46-111 of the New Mexico 1941 Compilation which provides as follows:

"Any and all assignments of wages or salaries due or to become due to any person in order to be valid, shall be acknowledged by the party making the assignment before a notary public, or other officer authorized to take acknowledgments, and if the person making such assignment is married and living with his wife, such assignment shall be recorded in the office of the county clerk of the county in which the money is to be paid, and a copy thereof served upon the employer or person who is to make payment."

Thus, if the assignor was a single person, the assignment to J. L. Lawson would have preference, assuming the acknowledgment to be valid. If he was a married person, the assignment to the bank would have preference, unless the bank had actual knowledge of the previous assignment. (1 C. J. 770.)

If the acknowledgment on the assignment to J. L. Lawson appears to be dated prior to the date of the execution of the instrument, it would not be valid, if the date of the acknowledgment was, in fact, correct. If, however, May was inadvertently inserted instead of June, and the acknowledgment actually taken on June 5, this would not invalidate the acknowledgment. (See 1 C. J. 829.)

In view of the foregoing, it appears to me that the safest position for the County Commissioners to take would be to either require the interested persons to sign an

agreement as to how the funds now in their hands should be allocated, or let the parties sue and then file an interpleader and pay the money into the Court.

You will please find enclosed the letter from the County Commissioners and the two assignments. If I can be of any further service in the matter, please advise me.

By ROBERT W. WARD,

Assistant Attorney General