

Opinion No. 45-4732

June 6, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. J. V. Gallegos Assistant District Attorney Tucumcari, New Mexico

{*83} We are in receipt of your letter of June 4, 1945, in which you state that several of the sheriffs in your district have charged and received only 6 [cents] a mile for official travel whereas they are legally entitled to 8 [cents] a mile. You also state that some of these claims for the additional 2 [cents] per mile go back as far as 1943. In view of this situation, you ask our opinion as to whether or not these claims may legally be paid out of the present sheriffs expense account, even though the trips were made previous to July 1, 1944.

In response to your inquiry, your attention is directed to Section 7-607 of the 1941 Compilation which is the Bateman Act and which makes it unlawful for any officer of any county to "use the fund belonging to any current year for any other purpose than paying the current expenses of that year."

In view of this section, it is my opinion that the county commissioners cannot legally pay claims arising prior to July 1, 1944, from the present sheriffs expense fund. However, by virtue of Section 7-610, 1943 claims could be paid out of taxes collected this year for 1943. By virtue of Section 76-745, upon the sale of property by the State Tax Commission 80% of the purchase price is credited to the various counties and may be used to pay past due claims.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst, Atty. General