

Opinion No. 51-5416

September 6, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. M. W. Hamilton Attorney Bureau of Revenue Santa Fe, New Mexico

{*120} Recently you inquired whether HB 82, being Chap. 42, Laws of 1951, reducing the fees upon motor buses not operating under a common carrier, contract carrier or private carrier permit issued by the State Corporation Commission, entitled such carrier to a refund of registration fees for the last half of the calendar year of 1951. It appears that these fees were paid in advance and based upon the old law which provided that a registration fee should be paid for each bus in the amount of \$ 50, plus \$ 10 for each seat of the normal seating capacity of such vehicle. The new law provides that the registration fee to be paid for such buses shall be \$ 25, plus \$ 5 for each seat of the normal seating capacity of such vehicle.

§ 68-226 N.M.S.A., provides for registration fees of motor vehicles. It specifies that the fees therein provided shall be paid to cover the year 1930 and subsequent years. No provision is therein made for splitting registration fees upon a half-year basis.

§ 68-214, N.M.S.A., provides that every vehicle registration under the Act expires December 31st of each year and requires annual renewal by the owner of such vehicle by payment of the fees required on or before March 2nd of each year.

It is my opinion that the Motor Vehicle Department cannot make a refund of any registration fees paid by virtue of the law in effect at the time such registration fees were paid. Your attention is called to the Opinion of the Attorney General, No. 4998, dated March 12, {*121} 1947, covering the question as to whether the Motor Vehicle Department could legally refund one-third of the motor vehicle license fees paid by veterans, who were denied that exemption during the time that the question was in litigation.

In that opinion attention was called to Sec. 30, Article 4 of the State Constitution, which provides as follows:

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriations made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the object to which it is to be applied."

Your attention is further called to what was contained in that opinion as to the disposition of fees collected upon the registration of motor vehicles.

"Section 68-231, New Mexico statutes 1941 Compilation, sets out the disposition to be made of license fees collected and provides that they shall be paid over to the State Treasurer not later than the close of the second business day after their receipt. After a deduction of an amount for the expense of administration and enforcement of the act, the remainder of the moneys are to be distributed by the State Treasurer on or before the tenth day of the month next after their receipt."

It thus appears that all registration fees are paid to the State Treasurer not later than the close of the second business day after their receipt. Once paid to the Treasurer, Sec. 30 of Article IV of the Constitution prohibits any disbursement therefrom except by legislative appropriation.

In holding that the Commissioner of the Motor Vehicle Department, or other administrative officer, could not make any refund in the former case, the then Attorney General stated:

"In view of Section 30, Article 4, of the New Mexico Constitution, and in view of the further fact that there is no statute which makes an appropriation for such refund, or which authorizes or empowers the commissioner of the Motor Vehicle Department, or any other administrative officer, to make this refund, it is the opinion of this office that you may not legally refund one-third of motor vehicle license funds to veterans who were denied that exemption during the time that the question was in litigation, regardless of whether the fees were or were not paid under protest."

What was said there applies equally well in the instant case. By virtue of Section 30 of Article IV, and in view of the fact that there is no statute making an appropriation for any such refund, or which authorizes or empowers the Commissioner of the Motor Vehicle Department to make such refund, the Motor Vehicle Department cannot make any refund of fees paid for registering busses for the year 1951 by virtue of Chapter 42 of the Laws of 1951.