

Opinion No. 55-6109

February 18, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

In your letter dated February 15, 1955, you refer to Attorney General's Opinion No. 5460 and the memorandum in connection with the same dated January 23, 1952, addressed to the Secretary of State. You inquire whether this office is still of the same opinion concerning the manner of handling fees received from applicants for notary public commissions.

The opinion and memorandum deal with the language "which shall be retained by the secretary" which was placed in the notary public law passed prior to the adoption of the Constitution and apparently was inserted in order that the secretary of state could retain such fees for her own use in lieu of salary. With the adoption of the Constitution and the salary system, the retention of fees by public officers was superseded and the later law, requiring all moneys received by public officers to be deposited in the State treasury, would likewise supersede the provisions for retaining such fees.

In our opinion, this language is not sufficient to constitute a separate appropriation of such fees for use of the secretary of state and the moneys when deposited in the State treasury would become a part of the General Fund and require a specific appropriation to the secretary of state before the same could be used for any purpose. To that extent, the Opinion referred to is overruled.

By C. C. McCulloh

Assistant Attorney General