

Opinion No. 56-6477

June 22, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. John Block, Jr., Chairman, State Corporation Commission, State Capitol Building, Santa Fe, New Mexico

You ask for our opinion on the question:

May the State Corporation Commission refund fees erroneously paid to the Commission in the years 1954 and 1955?

Article XI, Section 6 of our State Constitution provides that:

". . . all fees required by law to be paid for the filing of articles of incorporation, reports and other documents, shall be collected by the Commission and paid into the State Treasury. . . ."

Further our Constitution provides, in Article IV, Section 30, that:

". . . Money shall be paid out of the treasury **only upon appropriation made by the Legislature.. . .**" (Emphasis Supplied)

The latter constitutional provision has been held by our Court to prohibit the payment of **any monies** out of the State Treasury except upon appropriation, even though the monies were erroneously paid to the State of New Mexico. See *McAdoo Petroleum Corporation vs. Pankey*, 35 N.M. 246. This is the case at least in the absence of a valid refund statute. I cannot find such a statute in the case presented by you.

Refund of fees erroneously paid to the State Corporation Commission and covered into the State Treasury is thus prohibited by Article IV, Section 30 of the State Constitution. Therefore your question is answered in the negative.

By: Santiago E. Campos

Assistant Attorney General