

Opinion No. 57-199

August 12, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M Calkins, Jr. Assistant Attorney General

TO: Chapin S. Carnes, Chairman, State Collection Agency Board, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. May the State Collection Agency Board at this time issue a collection agency license under § 67-15-8, N.M.S.A., 1953 Compilation, (repealed effective June 7, 1957, by Chapter 218, 1957 Session Laws), in cases where the applicants applied prior to the repeal of § 67-15-8?
2. Chapter 218, supra, is silent as to payment of compensation, per diem or reimbursement for mileage. Is it possible to compensate or reimburse board members for per diem and mileage under the new act?

CONCLUSIONS

1. No, unless all of the conditions were complied with and the refusal to permit the examination was arbitrary.
2. The board is not entitled to compensation, but may be reimbursed for per diem and mileage.

OPINION

ANALYSIS

We are informed that the State Collection Agency Board has two or three instances where individuals have applied for a collection agency license under § 67-15-8, supra, prior to June 7, 1957, the repealing date of the act, but whose application the Board was unable to process due to such cause as insufficient information, extra time needed to investigate the subject, etc.

The question now arises as to whether the above applicants should be processed under the old act or whether they should be processed under Chapter 218.

As a general rule, it has been held that where a statute is repealed and there is no savings clause or general statute limiting the effect of the repeal, the repealed statute is considered as if it never existed.

In 50 Am. Jur., page 533, an exception to the above rule is stated as follows:

"It is clear that the repeal of a statute cannot have the effect of extinguishing vested rights which have been acquired under the former law, and where the result will be to impair contracts or vested rights, a construction is to be avoided which will give a retrospective operation to a repealing statute."

Volume 33, Am. Jur., at page 342, discussed the problem as to whether a license constitutes a contract between the sovereignty and the licensee, and further, whether a license confers a vested permanent or absolute right. This question is clearly answered in the negative by the above text in which it is pointed out that a license is only a personal privilege to be exercised under existing restrictions and such as may thereafter be reasonably imposed.

Inasmuch as there was no savings clause in Chapter 218, it is our opinion that upon repeal § 67-15-8 became null and void and for all practical purposes at this time has ceased to exist.

Turning to question No. 2, Chapter 218, supra, provides for the appointment of a board consisting of three members. Their duties consist of assisting the State Bank Examiner in administering the new collection agency act, including the holding of an examination at least every six months and the preparation of examination material. The act is silent on the matter of compensation, reimbursement of expenses or mileage allowance.

Chapter 235, Laws of 1957, which provides for the appropriations for the 46th and 47th fiscal years, provides in part the following:

Bureau of Revenue Forty-Sixth Forty-Seventh
Collection Agencies: Fiscal Year Fiscal Year

1. Salaries \$ 3,600 \$ 3,600
2. Travel and automotive 800 800
3. Supplies and materials 50 50
4. Printing and reproduction 150 150
5. Other operating expense 2,147 2,147

Total \$ 6,747 \$ 6,747

To be appropriated from departmental earnings."

Where no salary or compensation is provided for by the Legislature in the act which creates the office or board, then no salary or compensation can be allowed. Where, as in this case, there has been an appropriation to cover per diem, reimbursement and

mileage appropriated to cover expenses incurred while on official business, then mileage and per diem will be reimbursed.

Under Comptroller's Regulation 45-12, dated April 18, 1957, the State Department Heads were informed by order and approval of the State Board of Finance that effective July 1, 1957, per diem not in excess of \$ 8.00 and mileage not in excess of 7c would be allowed.

We, therefore, feel that although no compensation can be paid to the Board for attending to official business, they are authorized for reimbursement for per diem and mileage as indicated above.