

**Opinion No. 58-25**

February 10, 1958

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr.,  
Assistant Attorney General

**TO:** Mr. Ernest W. Bain, Chief, Local Government Division, Department of Finance and  
Administration, Santa Fe, New Mexico

**QUESTION**

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With reference to Sec. 64-11-12 (PS), "What date would be used by the county treasurers as the commencing date for the distribution of this 15% revenue?"

CONCLUSION

Upon receipt.

**OPINION**

ANALYSIS

Sec. 46-11-12 (PS) provides in part as follows:

"The fees collected under the provisions of this act shall be paid over to the state treasurer not later than the close of the second business day after their receipt. Not to exceed four per cent (4%) thereof shall be covered into the motor vehicle fund, and used to defray the expense of the administration and enforcement of this act and the discharge of such other duties as may be imposed upon the division by law. The remainder thereof shall be distributed by the state treasurer on or before the tenth day of the month next after their receipt, as follows:

\* \* \* \*

Fifteen (15) per cent thereof shall be paid over to the county treasurers of the several counties of this state and distributed between said respective counties in the proportion that the total amount of registration fees paid for vehicles owned in each county bears to the total amount of such registration fees paid for vehicles owned in the state, **and the county treasurer of each county shall distribute the moneys paid to him under the provisions of this paragraph, when received, between the county and school district funds of such county and the various cities, towns and villages therein, in the same proportion that the receipts from general property taxes, other than taxes for state purposes, received by said treasurer for the year in which such**

**distribution is to be made, are so distributed in such county between said county and school district funds, and said cities, towns and villages therein.** Provided, that in the counties wherein are located cities, towns or villages incorporated, organized and operating under special act, the county treasurer of such county shall pay to the treasurers of said cities, towns or villages a proportionate amount of said money, by him to be distributed in the proportion that the receipts from general property taxes in said cities, towns or villages, bear to the total receipts from general property taxes other than taxes for state purposes received by the county treasurers and the collectors of said cities, towns or villages in the year in which said distribution is to be made. And, Provided, further, that for the purpose of effecting an equitable distribution in said counties, the collectors of said cities, towns or villages operating under special act shall, on or before the first Monday in October, certify to the county treasurer, and to the state tax commission, the assessed valuation and the total tax rate in said cities, towns or villages for such year. The remainder thereof shall be credited to the state public school equalization fund." (Emphasis supplied)

In Attorney General's Opinion No. 57-311, this office was asked whether distribution, as herein considered, would "be made on the collections of a calendar year or on the collections of a fiscal?" The question and conclusion of that opinion are misleading and are superseded hereby.

Restricting ourselves to the question above stated, it becomes apparent that the manner of collecting motor vehicle registration fees has no bearing upon the subsequent distribution thereof. Collections are made by the Motor Vehicle Division on a somewhat continuous basis and monthly distributions thereof are made to the several county treasurers. The question put is directed to distributions which are made subsequently by the treasurers.

From the language of the statute, as underlined, distribution to the county and school district funds and the cities, towns and villages, shall be made in the same proportion as are the general taxes received by the county treasurer. And further, such distribution shall be made by the county treasurer **upon receipt** of the considered funds.

Immediately, it might be concluded that local distribution must be made on the date of receipt from the state, or as near thereto as is practicable in keeping with accepted accounting and bookkeeping practices. However, the following administrative procedure must be taken into consideration. Sec. 72-4-4 (PS) imposes, upon the several Boards of County Commissioners, the "duty" of meeting on the first Monday of September and ordering all levies of necessary taxes for the **fiscal year** as provided by law. Such levies must conform with estimated budgets as approved by the Department of Finance and Administration, and further not exceed the limitations otherwise provided by law.

For the sake of expediting a uniform levy schedule, the afore described duty imposed on the County Boards is actually carried out by the Local Government Division of the Department of Finance and Administration. The county treasurers receive their respective levy schedules the latter part of September or in early October.

In view of the fact that the fiscal year begins the first of July and that the final levy date is in September, it must be concluded that no definite or fixed distribution could be made until after the levy order is issued. Accordingly, any distribution and expenditures made between the the first of July, and the levy schedule order date would of necessity only be estimates, which in turn would require possible adjustments subsequently.

Finally, Sec. 72-5-14 provides that the county treasurers shall prepare written reports not later than the tenth of each month, wherein will be stated funds collected and the sources thereof. Also, and at the same time, distribution will be made to the state (funds belonging to the state) and to the municipalities.

Thus, it is our opinion that distribution of the fifteen per centum received from the state by the county treasurers from collections made by the Motor Vehicle Division may be made subsequent to the issuance of the levy schedule in September, and thereafter, on a monthly basis in keeping with provisions herein discussed.