

Opinion No. 61-01

January 5, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Boston E. Witt, Assistant Attorney General

TO: Mr. Richard T. Whitley, Assistant District Attorney, Clayton, New Mexico

QUESTION

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Do membership application fees for rural electric cooperatives come within the provisions of the Disposition of Unclaimed Property Act?

CONCLUSION

No.

OPINION

ANALYSIS

The section of the Unclaimed Property Act that deals with utilities is Sec. 22-22-5, N.M.S.A., 1953 Comp. (PS), which reads in part as follows:

"The following funds held or owing by any utility are presumed abandoned:

A. Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than ten [10] years after the termination of the services for which the deposit or advance payment was made.

* * *"

We have been unable to find any case that deals with the problem here presented either in this state or in any state that has adopted the Uniform Disposition of Unclaimed Property Act. We can, therefore, only ascertain the intent of the legislature by construing the language used by it. It appears relatively clear to us that the legislature did not intend to include membership fees within the purview of this statute. The whole tenor of this section relates to deposits or advances with a utility to insure payment of the utility bills subsequently incurred. Such is not a membership fee. It is not normally returnable nor can it normally be called an advance payment for utility service. It is simply an administrative fee or charge made by the company which is paid only once but is not

applicable to future cost of services incurred by a subscriber. It is more in the nature of dues than an advance or deposit.

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