

## **Opinion No. 64-98**

July 29, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Wayne Wolf, Assistant Attorney General

**TO:** James C. Compton, District Attorney, Ninth Judicial District Portales, New Mexico

### **QUESTION**

#### **QUESTIONS**

1. Does paragraph A of Section 48-22-8 N.M.S.A., 1953 Compilation (P.S.) of the Banking Act permitting a bank to pay out up to two-thousand dollars (\$ 2,000) to a surviving spouse or next of kin take precedence over Sections 31-13-1, two (2) and five (5) which established a limit of three-hundred dollars (\$ 300) for the same purpose?
2. Is Section 48-22-8 N.M.S.A., 1953 Compilation (P.S.) consistent with Sections 31-16-2 and 10, N.M.S.A., 1953 Compilation which pertain to succession tax?"

#### **CONCLUSIONS**

1. Yes.
2. Yes.

### **OPINION**

#### **ANALYSIS**

Paragraph A of Section 48-22-8 N.M.S.A., 1953 Compilation (P.S.) provides that where no executor or administrator of a deceased person has given notice of his qualifications to a bank, it may pay out up to two-thousand dollars (\$ 2,000) to a surviving spouse or next of kin of the deceased depositor. Sections 31-13-1 and 31-13-2 N.M.S.A., 1953 Compilation provide that a bank may pay out up to three-hundred dollars (\$ 300) to the surviving spouse or next of kin of a deceased depositor. Section 31-13-5 N.M.S.A., 1953 Compilation exempts the paying bank from giving notice to the succession tax division of the Bureau of Revenue before making payment under 31-13-3 N.M.S.A., 1953 Compilation. These last three sections are found in the compilation of statutes pertaining to the administration of decedents' estates. They were not repealed specifically when the new Banking Act was passed by the legislature. The question now presented therefore is whether or not the new Banking Act is so inconsistent with the provisions of these earlier sections as to operate to repeal them by implication.

Repeals by implication are not favored in the law and will not be found to exist unless the statutes are so inconsistent that they cannot be harmonized into a workable system. **State v. Valdez**, 59 N.M. 112, 279 P2d 868. We are of the opinion, however, that the three-hundred dollar (\$ 300) limitation provisions cannot be reconciled with the new two-thousand dollar (\$ 2,000) limitation that is found in Section 48-22-8 N.M.S.A., 1953 Compilation (P.S.) and therefore the statute later in time controls.

Section 31-13-5 N.M.S.A., 1953 Compilation refers to notice given to the Bureau of Revenue before making the payment pursuant to Section 31-13-3 N.M.S.A., 1953 Compilation. The paying bank is exempt by this section from giving notice to the Bureau of Revenue before making the payment. This section, of course, does not mention payment pursuant to the terms of the new Banking Act and thus there is not express exemption from the notice requirements found in Section 31-16-10 N.M.S.A., 1953 Compilation. If we were to say that the exemption in 31-13-5 N.M.S.A., 1953 Compilation applies to payment made pursuant to the new Banking Act we would be legislating. We feel, however, that this question should be answered by the legislature and until express exemption from the requirements of 31-16-10 N.M.S.A., 1953 Compilation, is made we have no alternative but to say that it is our opinion that a bank making payment pursuant to the provisions of Section 48-22-8 N.M.S.A., 1953 Compilation (P.S.) is not exempt from giving the notice required by Section 31-16-10 N.M.S.A., 1953 Compilation.

According to the provisions of Section 31-16-10 N.M.S.A., 1953 Compilation, notice of payment must be given to the Bureau only when the depositor is a nonresident and the payment is being made to a foreign executor, administrator or trustee or to the legal representatives of the decedent. Paragraph B of Section 48-22-8 N.M.S.A., 1953 Compilation (P.S.) also applies only to nonresident depositors. This new section permits payment of up to two-thousand dollars (\$ 2,000) only after a sixty day waiting period subsequent to the death of the depositor, and we are of the opinion that the paying bank can give at least ten days notice to the Bureau of intention to make payment before the expiration of the sixty day period so that payment could be made pursuant to the Banking Act without any delay. In short we are of the opinion that the notice provisions of Section 31-16-10 N.M.S.A., 1953 Compilation can be harmonized with Section 48-22-8 (B), 1953 Compilation (P.S.) so that no implied repeal of Section 31-16-10, supra is required.