

Opinion No. 67-121

October 20, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. W. J. Upton Commissioner of Banking Department of Banking 113 Washington Avenue Santa Fe, New Mexico 87501

QUESTION

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1. Are examinations of the collection agencies required to be made by the Banking Department?
2. What compensation can be obtained for compliance with Article 67-15-26?

CONCLUSIONS

1. Yes.
2. None.

OPINION

{*185} ANALYSIS

Section 67-15-26, N.M.S.A., 1953 Compilation provides:

Duties of chief of division. -- The chief shall discover violations of the Collection Agency Act (67-15-22- to 67-15-89) by persons engaged in business as collection agencies who fail to obtain licenses and shall gather evidence of violations of the Collection Agency Act and furnish the same to prosecuting officers of any county for the purpose of prosecuting all violations of the Collection Agency Act occurring within their jurisdiction.

The chief, for the purpose of discovering violations of the collection Agency Act, shall investigate the business, examine the books, accounts, records and files used therein by the licensee and for such purpose the chief shall have free access to the office, places of business, books, accounts, records, papers, files, safes, and vaults of all licensees and any other person engaging or attempting to engage in business as a collection agency.

The terms of this statute are mandatory, therefore collection agencies must be examined for the purpose of discovering violations of the Collection Agency Act.

Since there is no statutory requirement that the agencies be examined or investigated on a schedule it is our opinion that the number and type of examinations to be done each year is a matter that rests within the sound discretion of the Commissioner of Banking.

It is our opinion that the Commissioner of Banking may not charge a collection agency any fee as compensation for complying with Section 67-15-26, supra. The fees that may be collected are set forth in Section 67-15-86, N.M.S.A., 1953 Compilation. The only possible item in this section that could apply is Subsection G which establishes an examination fee of \$ 25.00. However, it seems eminently clear that this fee is for the examination of applicants contemplated by Sections 67-15-37 through 67-15-45, N.M.S.A., 1953 Compilation. We note particularly Section 67-15-39 which provides in pertinent part:

Qualifications of applicants. -- Except as in the Collection Agency Act (67-15-22 to 67-15-89) otherwise provided, the person to be actively in charge of an agency or office as manager, shall:

. . .

G. Pay the examination fee to the chief.

In conclusion therefore, collection {**186*} agencies must, at the discretion of the Commissioner of Banking, be examined but they may not be charged a fee for this examination.

By: Roy G. Hill

Assistant Attorney General