

Opinion No. 67-125

October 30, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Robert G. Mead State Investment Officer State Investment Council Box 966
Santa Fe, New Mexico 87501

QUESTION

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If the Investment Council buys common stock with a portion of the Reserve Investment Fund and the stock is subsequently sold and a capital gain is realized, should the gain be paid over to the current school fund or should it be paid in to the general fund at the end of each fiscal year?

CONCLUSION

The gain should be paid to the state general fund at the end of each fiscal year.

OPINION

{*191} ANALYSIS

Section 22-22-20, N.M.S.A., 1953 Compilation (1967 P.S.) provides that the Commissioner of Revenue must deposit funds received under the Uniform Disposition of Unclaimed Property Act (Sections 22-22-1 to 22-22-29, N.M.S.A., 1953 Compilation (1967 P.S.)) in a separate fund to be known as the reserve investment fund. Before making a deposit to the credit of the reserve investment fund the {*192} commissioner is authorized to deduct certain costs and fifteen percent of the amount collected which is to be placed in a suspense fund under the control of the commissioner for payment of approved claims, Section 22-22-20, supra.

Section 22-22-20, supra provides in part that:

The principal of the reserve investment fund may be invested by the state investment officer as are permanent funds of the state and as prescribed in Article 12, section 7 of the New Mexico State Constitution.

The interest and income derived from the investment of the reserve investment fund shall at the end of each fiscal year be paid into the state general fund. * * * After any **separate sum** has been collected from any holder and the amount collected paid into the reserve investment fund by the commissioner and the **amount deposited** has resided in the reserve investment fund for a period of twenty-five (25) years, then the

attorney general may commence escheat proceedings thereon pursuant to section 22-22-20.1 New Mexico Statutes Annotated, 1953 Compilation. When title to the **amount deposited** is vested in the state by escheat it shall be credited to the current school fund of the state. (Emphasis added).

Section 22-22-20.1A, N.M.S.A., 1953 Compilation (1967 P.S.) provides that the attorney general may commence actions to have it adjudged that title to unclaimed personal property, including original deposits in the reserve investment fund, has vested in the state.

Section 22-22-16, N.M.S.A., 1953 Compilation (1967 P.S.) provides that when property is paid or delivered to the commissioner under the Act the owner is not entitled to receive income or other increments accruing thereafter. The owner of the property is to receive only the original amount of the property paid or delivered to the commissioner under the Act. See Section 22-22-21, N.M.S.A., 1953 Compilation (1967 P.S.).

Section 22-22-20, supra, when read together with Sections 22-22-16 and 22-22-20.1A, supra, clearly provides that only the original amount of funds deposited in the reserve investment fund which have vested in the state by escheat, must be credited to the current school fund and that increments accruing from investment of the amount originally deposited must be paid into the state general fund at the end of each fiscal year.

It is our opinion that a gain realized from investment of the principal of the reserve investment fund is "income" within the meaning of Section 22-22-20, supra which must be paid into the state general fund at the end of each fiscal year.

By: Edward R. Pearson

Assistant Attorney General