

Opinion No. 69-150

December 24, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Jeff Bingaman, Assistant Attorney General

TO: Mr. Franklin Jones, Commissioner of Revenue, Bureau of Revenue, State of New Mexico, Santa Fe, New Mexico 87501

QUESTIONS

Can the Bureau of Revenue, pursuant to the provisions of the "Uniform Disposition of Unclaimed Property Act", Sections 22-22-1, et seq., N.M.S.A., 1953 Compilation (1969 Supp.), accept and hold unclaimed property prior to the time such property is presumed abandoned when such property is delivered to the Bureau of Revenue along with a report of abandoned property?

CONCLUSION

No.

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{*238} ANALYSIS

In Section 22-22-12, N.M.S.A., 1953 Compilation (1969 Supp.), it states:

"Every person holding funds or other property, tangible or intangible, presumed abandoned under Sections 22-22-1 {*239} through 22-22-29, N.M.S.A., 1953 Compilation, shall report to the commissioner with respect to the property as hereinafter provided."

The inescapable conclusion that we draw from this section is that the commissioner is impliedly granted the power to accept "funds or other property, tangible or intangible, presumed abandoned under Sections 22-22-1 through 22-22-29, N.M.S.A., 1953 Compilation."

As the New Mexico Supreme Court stated in **Vermejo Club v. French**, 43 N.M. 45, 85 P.2d 90 (1938), "An administrative body has such authority and only such authority as is given by law."

To like effect the same court stated in **Maxwell Land Grant Co., et al., v. Jones**, 28 N.M. 427, 213 P. 1034 (1923), "The State Tax Commission is a creature of statute, and it has only such powers as are conferred upon or granted to it by the statute under

which it assumed to act, and must be able to support its action by statutory authorization. . . ."

Since we can find no grant of power to the Bureau of Revenue under the Uniform Disposition of Unclaimed Property Act, Sections 22-22-1, et seq., N.M.S.A., 1953 Compilation, to accept and hold unclaimed property prior to the time such property is presumed abandoned, in our opinion the Bureau of Revenue may not legally do so.