

## Opinion No. 31-151 1/2

May 9, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Hon. Arsenio Velarde, State Auditor, Santa Fe, New Mexico.

{\*72} Your letter of May 7th, 1930 asks for an answer to the following specific questions:

1. Can you legally allow the payment of salaries of three field men from the funds of the Gasoline Tax Department, if such men are working solely for the Motor Vehicle Department?
2. In the event these three men are working for both the Motor Vehicle and Gasoline Tax Department, can their salaries be allowed from the Gasoline Tax Department funds or should salaries be borne by both departments?

Section 134-522 of the 1929 Code transfers the duties and powers of collecting gasoline taxes to the Comptroller and provides for certain salaries and officers to carry out such duties and powers. It further provides, after a specific allowance for certain salaries, that in **the administration said act**, the comptroller, with the written consent of the governor, might expend annually in addition to said salaries a sum not to exceed 5% of the annual collections of gasoline taxes under the act.

Section 134-521 of the 1929 Code, referring to the Motor Vehicle department, has exactly the same provisions as Section 134-522 regarding costs of administration of the Motor Vehicles Acts, except there is no specific provision for specific offices or salaries therefor.

Simply construing these Sections cited show conclusively that each of the departments was to be self-sustaining and neither department was {\*73} intended to help support any other department except, of course, as the income of each might, after deposit in the State treasury, be distributed according to law.

It would therefore, in our opinion, be illegal for one department, without special legislation, and such legislation might be constitutionally doubtful, to pay the employees of another department. If such employees are in the joint employ of two departments, each department must share equally their salaries and expenses. The departments might share same in proportion to the duties performed for each department if it were possible to apportion duties **exactly**.

Another possible point, though same is not raised by you, is that it might be said that in reality these departments are all under the Comptroller and that therefore all income, all expense and all cost is a joint matter. This, however, under the laws creating such

departments, is not true and in all matters except supervision, these departments are entirely independent of one another, unrelated and disconnected.