

**Opinion No. 44-4450**

January 29, 1944

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. Benjamin D. Luchini, Chairman-Executive Director, Employment Security Commission of New Mexico, Box 1301, Albuquerque, New Mexico

We are in receipt of your letter of January 14, 1944, in which you ask on which date a payment is considered to be made, the date on which the payment is mailed, as shown by the postmark, or the date on which such payment is received.

Your attention is directed to 48 C. J., 594, wherein the author says:

"Payment is not effectuated by sending the amount due to the creditor by mail or other public carrier until the remittance gets into the hands of the creditor, unless he expressly or by implication directs or consents that payment be so made or such mode of payment is according to the usual course of dealing between the parties, from which the creditor's assent can be inferred."

In view of this fact it is my opinion that Payments should not be considered made until they are received by your office, unless the Commission prescribe otherwise, or unless, through a continued practice of considering such payments made as of the date of their mailing. As a practical matter, this is the only way that you could effectively keep your books, in that if you considered payments made as of a date prior to their receipt by you, you would never know just what the status of any account was, in that checks might be in the mail.

Your attention is also directed to the fact that a check is not money, so that payment in fact has not been made until such check has cleared the bank. See 48 C. J. 618. This rule of course may be altered by an express or implied agreement.

Trusting that the foregoing sufficiently answers your inquiry, I am,

By ROBERT W. WARD,

Assistant Attorney General