

## **Opinion No. 61-81**

September 6, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

**TO:** Stanley J. Leland, M.D., Director, New Mexico Department of Public Health, Santa Fe, New Mexico

### **QUESTION**

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Are the fifty cent fees due to a subregistrar under the Vital Statistics Act to be transferred to the Department of Public Health when such subregistrar is also a regular employee of the Department?

#### **CONCLUSION**

Yes.

### **OPINION**

#### **ANALYSIS**

In arriving at an answer to the question posed, we have examined the 1961 Vital Statistics Act, particularly Sections 12-4-31 and 12-4-32, N.M.S.A., 1953 Compilation, (P.S.).

The basic legislative intent always appears to have been for each county to be financially responsible for its own subregistrar. Section 12-4-32(c), *supra*, provides that at the time of preparing county budgets the State Tax Commission shall require each Board of County Commissioners to provide in its budget a sufficient sum of money to compensate all subregistrars in the county for the fiscal year. This provision was included in the Act prior to the 1961 Amendments. Section 12-4-17, N.M.S.A., 1953 Compilation.

A further indication of the legislature's intent in this regard can be ascertained from Section 12-4-33, N.M.S.A., 1953 Compilation, (P.S.). This section provides as follows:

"Nothing in the Vital Statistics Act shall be construed as rendering the department liable for payments to subregistrars should there not be sufficient funds available to the credit of a county to meet the payments due the subregistrars of that county."

This provision too was contained in the Act prior to Amendment. Section 12-4-21, N.M.S.A., 1953 Compilation.

Section 12-4-31, N.M.S.A., 1953 Compilation, (P.S.) provides that:

"Each subregistrar shall be paid a sum of fifty cents (\$ .50) for each certificate of birth, death or stillbirth registered by him and transmitted to the state registrar; **provided, that if the subregistrar is an employee of the department** (State Department of Public Health) **the fee collected shall revert to the department in accordance with policies set by the state board of public health.**" (Emphasis added)

The 1961 legislature recognized that in some counties a regular health Department employee might also serve as subregistrar. In such instances it intended that the fifty cent fees be transferred to the State Department of Public Health. It is to be noted that in establishing the "subregistrar's fund" an estimate of the number of certificates to be registered by the subregistrar is used. Section 12-4-32(c), supra. Should the fund be over budgeted, only the fifty-cent fees that would ordinarily be paid to the subregistrar are to be transferred to the Department when the subregistrar is an employee of the Department. The unexpended balance remaining in each subregistrar's fund at the end of each fiscal year reverts to the general fund of the county. Section 12-4-33, N.M.S.A., 1953 Compilation, (P.S.).

In view of this answer to your first question, the other questions asked are moot.