

for examination, subject to his right to a hearing, or if certified, his name may, upon prior notice and opportunity to be heard, be removed from the certified list by the commission.

We shall be happy to furnish further advice if the case of any one individual poses a special problem not answered by this opinion.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID LANDAU
Legal Assistant

DL :mc

FEBRUARY 7, 1957

HONORABLE FREDERICK J. GASSERT, JR.
Director, Division of Motor Vehicles
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-3

DEAR DIRECTOR GASSERT:

You have requested our opinion as to whether you may refund driver's license fees in cases where the licensee has died before the expiration of the license. For the reasons hereinafter stated it is our opinion that you may not refund such fees.

While there appear to be no decisions concerning refunds in cases where the license has died, the authorities agree that a licensing agency which has illegally exacted fees may not be compelled to refund them absent statutory authorization therefor. *City of Camden v. Green*, 54 N.J.L. 591 (E. & A. 1892), and *Shoemaker & Co. v. Board of Health*, 83 N.J.L. 423 (Sup. Ct. 1912). See also 53 C.J.S. 696 (*sec. 57, Licenses*). It would seem that a similar rule should prevail where the fee has been properly collected but the license has prematurely lapsed through no fault of the licensor.

As to your right to make such refunds, there is no statutory provision permitting this to be done. On the contrary, it is provided by R.S. 39:5-40 that:

"Except as otherwise provided by this subtitle all moneys received in accordance with the provisions of this Title, whether from fines, penalties, forfeitures, registration fees, license fees, or otherwise, shall be accounted for and forwarded to the commissioner, who shall pay the same over to the State Treasurer, to be credited to the State Highway Fund and used for the purposes of such fund as provided by section 52:22-20 of the Title, State Government, Departments and Officers."

The licensing fees which you have received have of course all been paid over to the State Treasurer pursuant to the quoted statute and are no longer available to you. Such moneys may not be drawn out of the treasury except upon legislative appropriation. In this connection it is provided by Article VIII, Section II, paragraph 2 of the New Jersey Constitution in pertinent part as follows:

"No money shall be drawn from the State treasury but for appropriations made by law. All moneys for the support of the State government and for all other State purposes as far as can be ascertained or reasonably foreseen, shall be provided for in one general appropriation law covering one and the same fiscal year. . ."

It may be pointed out that this office advised Director Dearden that R.S. 39:5-40 bars refunds of motor vehicle fines which have been erroneously assessed. *Op. Atty. Gen.*, July 6, 1953, No. 30.

For the foregoing reasons it is our opinion that you may not refund driver's license fees in cases where the licensee has died before the expiration of the license.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: CHRISTIAN BOLLERMANN
Deputy Attorney General

CB:MG

FEBRUARY 6, 1957

HONORABLE ROBERT L. FINLEY
Deputy and Acting State Treasurer
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-4

Re: Federal land bank consolidated farm loan bonds

DEAR MR. FINLEY:

You have requested our opinion as to whether consolidated farm loan bonds issued by the Federal land banks qualify as legal investments for savings banks in New Jersey under the provisions of P.L. 1948, c. 67, § 175A (N.J.S.A. 17:9A-175A). In our opinion they do so qualify.

N.J.S.A. 17:9A-175 provides in part:

"A A savings bank may invest in

* * *

(6) bonds, debentures or other obligations issued by a Federal land bank or by a federal intermediate credit bank, under the Act of Congress of July 17, 1916, known as the 'Federal Farm Loan Act,' as amended and supplemented from time to time" (emphasis supplied).

The "Federal Farm Loan Act" (12 U.S.C.A. § 641 *et seq.*) provides for the issuing of farm loan bonds individually by the twelve Federal land banks (12 U.S.C.A. § 841) and for the issuing of *consolidated* farm loan bonds as the joint and several obligation of the twelve banks (12 U.S.C.A. §§ 847, 876).

The question presented is whether the phrase "obligations issued by a Federal