

## Opinion No. 53-5849

December 1, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Edward M. Hartman State Comptroller State Capitol Building Santa Fe, New Mexico

{\*268} In your letter dated November 18, 1953, you refer to § 76-745 regarding the disposition of proceeds of tax sales distributed by the Tax Commission to the various county treasurers. You ask two questions as follows:

1. If the county commissioners request approval of this office for the use of the total proceeds, less the state's share, for payment of outstanding claims of the county, have the provisions of § 76-745 been complied with?
2. Would a municipality have a legal basis for making claim for its portion of the proceeds based on current distribution rates if the monies have already been used to pay claims of the county?

§ 76-745, 1941 Compilation, was amended by § 43, Ch. 160, L. 1953 and the portion of this section in which you are interested now reads:

"If there be any outstanding and unpaid accounts against any county or school district funds for any year or years prior to the current year, the state comptroller may order the money, which would have been credited to current funds hereunder, to be credited to the proper funds for such prior year or years in sufficient amount, if available, to pay such outstanding and unpaid accounts; Provided, however, that nothing herein shall be construed so as to permit any violation of the Bateman Act."

For your information I am enclosing a copy of Opinion No. 4891 in which it was held that since the portion of the section involved does not mention municipalities, proceeds of the sales of property deeded to the State for delinquent taxes may not be used to pay outstanding accounts of municipalities.

It is to be noted, however, that the 1953 amendment does not authorize use of the proceeds for payment of the outstanding claims of the county or school district so as to permit any violation of the Bateman Act, §§ 7-607 -- 7-613, 1941 Compilation.

Specifically answering your first question, if the county commissioners request approval of your office for the use of the total proceeds, less the state's share, for payment of outstanding claims of the county and if payment of such claims does not violate the Bateman Act, and your approval for use of the proceeds for that purpose is given, then the provisions of the section, as amended, have been complied with.

Under the Bateman Act, if the outstanding claims are within the budget of the county, or school district, or if a judgment has been obtained based upon such claims, then approval of use of the proceeds to pay such claims would not violate the Bateman Act.

Answering your second question, since municipalities are only entitled to a distribution of their portion of the proceeds of such tax sales which are not needed to pay outstanding indebtedness of the county and school district, such municipality would have no legal basis for making a claim for a portion of the proceeds based on current distribution rate; in instances where monies have already been used to pay claims of the county with your approval.

By: C. C. McCulloh

Assist. Attorney General