

## **Opinion No. 55-6078**

January 18, 1955

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

**TO:** Mr. Jack Love Assistant District Attorney Fifth Judicial District, Roswell, New Mexico

On January 4, 1955 you wrote two letters requesting opinions concerning tax matters. In the first request, due to an obvious clerical error in the computation of taxes apparent upon the tax roll which was not discovered, a taxpayer voluntarily overpaid the taxes which should have been due. This payment was made about seven months prior to the discovery of the same. The taxpayer takes the position that under § 72-4-6 of the 1953 Compilation, which was § 76-306 of the 1941 Compilation, the treasurer should correct the erroneous assessment and refund the excess payment. You inquire whether a refund under such circumstances may be made by the treasurer in view of § 72-5-4 of the 1953 Compilation, which was § 76-404 of the 1941 Compilation, specifically providing the procedure for obtaining refunds.

§ 72-4-6 of the 1953 Compilation, among other things, authorizes county treasurers to correct obvious clerical errors in name, description of property or computation of amount of taxes. This authority, however, does not extend to the right to make refunds of taxes erroneously paid.

§ 72-5-4 of the 1953 Compilation specifically covers the procedure for obtaining such refunds and provides as follows:

"Erroneous payments. -- Ad valorem taxes paid voluntarily to any officer authorized to collect the same shall not be refunded or rebated in any instance, unless such person presents a claim to the District court by petition within ninety (90) days from the date of the payment thereof, claiming the same to have been erroneously or illegally charged. It shall be the duty of the district attorney, upon notice, to appear in response to such petition without the necessity of the issuing or service of any process, and the court shall hear and determine the matter and enter such judgment as the facts may require. All taxes paid under protest shall, by the treasurer or other collecting agency, be held in a suspense fund until legal proceedings for the determination of the right thereto shall have been concluded, at which time they shall be disposed of in accordance with the final judgment in such proceedings; Provided, that in case no legal proceedings shall be effectively begun within ninety (90) days from the date of the payment thereof, such moneys shall thereupon be funded and distributed as other taxes, and shall thereafter not be subject to repayment."

In view of the fact that no legal proceedings were begun within ninety (90) days from the date of payment of the excess taxes, neither the county treasurer nor the court would now have authority or jurisdiction to make a refund of such monies.

Your second letter also requests an interpretation of § 76-404, being § 72-5-4 of the 1953 Compilation, relative to the purchase of a tax sale certificate based upon an invalid assessment, or a duplicate assessment.

§ 72-5-4 only pertains to refund of taxes erroneously paid and does not authorize a refund of monies received upon the sale of tax sale certificates.

§ 76-730 of the 1941 Compilation, before its repeal in 1953 by Ch. 160 of the Laws of 1953, provides the procedure for obtaining a refund of monies paid for a tax sale certificate or tax deed based upon an invalid sale by the county treasurer.

§ 47, Ch. 160, Laws of 1953, provides that the provisions of existing law shall remain in full force and effect as to (a) tax sale certificates issued or assigned to private persons prior to the effective date of this Act. If the invalid sale was made by the county treasurer to a private person prior to June 13, 1953, when Ch. 160 became effective, the purchaser of such tax sale certificate could obtain a refund from the county pursuant to § 76-730 of the 1941 Compilation but not under the provisions of § 72-5-4 of the 1953 Compilation.

By:

C. C. McCulloh

Assistant Attorney General