

Opinion No. 55-6250

August 10, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, State Capitol, Santa Fe, New Mexico

In reply to your letter of July 28th 1955 in which you request an opinion from this office as to whether or not you as State Comptroller, have the authority to authorize the County Treasurer of Santa Fe County to make refunds to taxpayers involved, or must the taxpayers secure court orders before the reimbursement can be made. You state that in connection with the shortage by the former Santa Fe County Treasurer and reimbursement of this shortage by the bonding company, certain funds representing duplicate taxes paid by several different taxpayers, have been set up in a suspense account.

Section 72-5-4, N.M.S.A., 1953, provides as follows:

"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."

The language of the above quoted statute is very clear, specific and mandatory that any ad valorem taxes paid voluntarily to any officer authorized to collect the same, in this case the County Treasurer, **"should not be refunded or rebated in any instance,** unless such person presents a claim.

In view of the language of the above quoted statute, it is the opinion of this office that you as State Comptroller have no authority to authorize the present County Treasurer of Santa Fe County to make refunds to the taxpayers involved. It is further our opinion that the taxpayers must secure court orders before reimbursements or refunds can be made.

I trust this answers your inquiry.

By: Hilario Rubio

Assistant Attorney General