

## Opinion No. 55-6306

October 31, 1955

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

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

You have submitted to this office for our opinion the following questions:

"1. Should the county treasurer remit 10% of the delinquent taxes, interest and penalty on same, only after such property has been acquired by the State by reason of a tax sale certificate or a tax deed and a taxpayer subsequently redeems said property at the office of the county treasurer?

2. If the answer to Question 1 is yes, should the county treasurer remit 10% of delinquent taxes, interest and penalty on same when the property in question has not been deeded to the State or has not had a tax sale certificate issued upon it although requested (sic.) by the statute?

3. Are the county treasurers correct in retaining all costs, interests and penalties collected on personal property taxes that have become delinquent? Some county treasurers have been remitting 1/2 of 2% costs and 1/3 interest and penalty to the Tax Commission. Is this remittance still required under the present status?"

The following statutes are applicable:

Section 72-7-32, N.M.S.A., 1953:

"Percentage of county delinquency collections for state tax commission fund. -- Thirty (30) days after this act becomes effective ten per cent (10%) of all delinquent taxes, interest and penalty, collected after the time when the state tax commission acquires jurisdiction to make collection of delinquent taxes, when collected, shall be by the county treasurer paid to the state treasurer of the state of New Mexico and by such treasurer of the state covered into the state tax commission fund to be used by the state tax commission as provided by law."

Section 72-7-4, N.M.S.A., 1953:

"Interest and penalties to be charged -- Addition for costs on sale for delinquency -- Division of proceeds -- One third of interest for tax commission -- Transfer of balance of county sale cost fund. -- Interest and penalties on taxes that have become delinquent shall be charged in all cases as provided by law applicable thereto, and the county treasurer shall add to each item of taxes due and delinquent, at the date of sale and not before, an amount equal to two per cent (2%) of the amount of the tax delinquent, designating such amounts as costs, and when collected such costs shall be covered

one-half to the state tax commission fund and the other one-half into a fund of the county from which the costs of sale shall be paid. In addition thereto, said county treasurer shall transmit to the state tax commission an amount equal to one-third of the interest collected upon such delinquent taxes. Any surpluses remaining in such fund of the county, at the end of the fiscal year shall be transferred to the general county fund, or so much thereof as shall not, in the judgment of the county commissioner, be required for the payment of current expenses in connection with the sale of property for delinquent taxes."

Section 72-7-1, N.M.S.A., 1953:

"Collection by tax commission after last installment is delinquent for six months. -- The power, jurisdiction and authority to collect all delinquent taxes is hereby vested in the state tax commission, and hereafter whenever any tax has not been paid within six (6) months after the date on which the second half of property taxes become delinquent as provided by law, the power, jurisdiction and authority to collect the same shall become vested in the state tax commission."

At the outset, it may be well to list the various items dealt with in the statutes above and portions of which items are to be paid into the State Tax Commission fund.

Section 72-7-32 deals with (1) delinquent taxes, (2) interest, and (3) penalties. Section 72-7-4 deals with (1) interest, and (2) costs. Penalties are mentioned also in this statute. However, no direction is made therein as to their disposition. The two statutes obviously are in conflict regarding the matter of interest and the percentage thereof which is to be paid into the State Tax Commission fund. Thus, so much of the earlier statute, § 72-7-4, as conflicts with the later statute, § 72-7-32, is repealed by implication because of the conflict. The later statute, § 72-7-32, as concerns interest, governs.

However, concerning costs, it is apparent that no provision is contained in § 72-7-32 governing these, and for this reason § 72-7-4 governs.

It is noted that the operation of § 72-7-32 comes into effect ". . . when the state tax commission acquires jurisdiction to make collection of delinquent taxes, . . ." Section 72-7-1 defines this time as ". . . six (6) months after the date on which the second half of property taxes become delinquent . . ."

In your first and second questions, you mention tax sale certificates. It should be pointed out that the tax sale procedure has been changed for delinquent taxes from the year 1950 on. Tax sale certificates are no longer used and the tax sale record or list provided for in § 72-8-7 takes the place of the tax sale certificate procedure.

Property is sold to the State by the county treasurers on the third Monday in January. § 72-8-1. Upon the sale, the title vests in the State without more, subject to the right of redemption. § 72-8-5. After the period for redemption has passed, a tax deed is given

the State. § 72-8-15. It is until this time that §§ 72-7-4 and 72-7-32 operate. This is apparent from the language in the two statutes.

The statutes contemplate that the county treasurer shall pay to the State Treasurer a portion of these items to be covered into the State Tax Commission fund. Through the period of redemption, the State Treasurer may receive the delinquent taxes. Thereafter, when the property has been deeded to the State, the county treasurer no longer collects the taxes and it is the State Tax Commission which thereafter handles the property.

Your questions are, therefore, answered as follows:

1. No. As indicated above, the treasurer remits 10% of the delinquent taxes, interest and penalty from the time the Tax Commission acquires jurisdiction to collect taxes, as above defined, until the State receives a deed for the property.

2. This question requires no answer in view of our answer to question No. 1.

3. It is the opinion of this office that the county treasurers are correct in retaining all costs, interest and penalties collected on personal property taxes that have become delinquent. Section 72-7-4, as held previously by this office in Opinion No. 1634, dated May 7, 1937, applies to interest and costs on real property taxes which have become delinquent. It is our view that § 72-7-32 also applies only to interest, penalties and taxes upon real property which have become delinquent. The latter is a part of Chapter 190, Laws of 1939, and this act deals exclusively with real property taxes.

In connection with the remittance of 10% of the delinquent taxes required by § 72-7-32, I should like to call to your attention Attorney General's Opinion No. 3127, dated May 5, 1939, wherein the Attorney General at that time expressed concern that those taxes going to the counties, school districts and municipalities possibly could not be diverted as attempted in the statute, and the recommendation made there that the constitutionality of this statute be tested is again urged.

I trust the above helps answer your inquiries.

By Santiago E. Campos

Assistant Attorney General