

## **Opinion No. 61-99**

October 5, 1961

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Shirley C. Zabel, Assistant Attorney General

**TO:** Alexander F. Sceresse, District Attorney, Second Judicial District, Albuquerque, New Mexico

### **QUESTION**

#### QUESTIONS

1. How is the interest at the rate of one per cent per month collected on delinquent taxes by the county treasurer to be distributed between the county, the city and the schools?
2. May the treasurer use the current tax rate to distribute the interest on delinquent taxes from 1956 to date?

#### CONCLUSIONS

1. The interest follows the tax and should be apportioned among the county, city and schools in the ratio of their respective shares in the tax itself.
2. No. As the interest follows the tax, the tax rate for the year of the tax for which the interest was collected should be used.

### **OPINION**

#### ANALYSIS

In your letter you state that interest at the rate of one per centum per month is collected on delinquent taxes by the county treasurer. You then mention transfer of these funds to the State and Middle Rio Grande Conservancy District and permanent transfers from the county fund which have been ordered by the State Board of Finance.

We base this opinion on the assumption that the transfers to date were in conformity with law. Accordingly, the direction as to the distribution of the funds applies only to the balance of \$ 76,633.79 which you report remains to be distributed.

In the absence of statutory authority pertaining to the distribution of interest follows the tax and should be apportioned among those interested in the tax in the ratio of their respective shares:

**School District of Omaha v. Adams**, 147 Neb. 1060, 26 N. W. 2d 24, (1947) **Board of County Commissioners of District No. 4 of Greenwood Greenwood County v. School County**, 139 Kan. 297, 31 P. 2d 723 (1934) **City of Bisbee v. Cochise County**, 44 Ariz. 233, 36 P. 2d 559 (1934) **Long Beach City School District v. Payne**, 219 Cal. 598, 28 P. 2d 663 (1933) **Board of Education of Kansas City v. Griffith**, 116 Kan. 38, 225 P. 1063 (1924) **85 C. J. S., Taxation** Section 1064

We do not find any specific statutory provision in New Mexico governing the distribution between the county, city and schools of 1% interest per month collected by the county treasurer. Section 72-7-4, N.M.S.A., 1953 Compilation deals with the amount of interest to be paid the State.

Section 72-7-4, N.M.S.A., 1953 Compilation, also directs the distribution of 2% costs to be added at the date of sale. The last sentence of this section provides:

". . . Any surplus 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."

This office has held that the term "such fund" refers to the cost fund of the county, it does not pertain to the 1% interest per month in question here. Attorney General Opinion No. 1634, 1937.

Section 72-7-31, N.M.S.A., 1953 Compilation, provides:

"All moneys collected and not distributed or that may be collected by the treasurers of the several counties by suit or otherwise on account of delinquent taxes, shall be distributed as follows:

"That portion of such taxes levied for state purposes shall be paid to the state treasurer and covered into the state general fund; all of the remainder shall be covered into the respective funds entitled thereto as of the date of the levy thereof, if such fund or funds be in existence, otherwise into the general county fund, excepting where such delinquent taxes be subject to payment of a judgment rendered by a court of competent jurisdiction."

In Attorney General's Opinion No. 3246, 1922, we held that the town and school districts are entitled to their proportionate share of delinquent taxes under this section. Interest is not specifically mentioned in the opinion. We do not deem it necessary to decide if "moneys collected on account of delinquent taxes, includes interest. If applicable, this provision is merely declaratory of the rule in the absence of statutory authority.

Therefore the method for distribution of these funds between the county, city and schools is as follows: The tax rate and the proportionate shares in it should be ascertained for each year from 1956 to date. The interest collected on taxes for each of

these years should be distributed in proportion to the shares to which the county, schools and city were entitled in the tax itself.

The answer to your second question is no. As the interest follows the tax, the tax rate for the year of the tax involved should be utilized in effecting the distribution.