

Opinion No. 73-37

April 16, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

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QUESTIONS

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Sections 55-12-8 and 22-9A-9, N.M.S.A., 1953 Comp. (P.S.) authorize reimbursing the property owner for the prorata portion of real property taxes paid which are allocable to the period subsequent to the date of vesting of title in the agency or department or the effective date of the possession of the real property by the agency or department, whichever is earlier. Are these statutory provisions valid?

CONCLUSION

Yes.

OPINION

{*73} ANALYSIS

Under Article VIII, Section 3, New Mexico Constitution, "The property of the . . . state . . . shall be exempt from taxation." But this provision does not in itself prohibit the state from prorating the taxes on state-acquired property from the date of acquisition, i.e., reimbursing the property owner for the {*74} prorata portion of real property taxes paid which are allocable to the period subsequent to the date of vesting of title in the agency or department or the effective date of the possession of the real property by the agency or department, whichever is earlier.

The prohibition only appears obliquely in Section 72-5-12, N.M.S.A., 1953 Comp., which provides:

"All taxes levied upon real estate shall be a lien thereon from the first day of January of the year in which the levy is made and continue as such until paid or foreclosed by sale. Taxes levied on all property shall be a personal obligation of the owner thereof, and a personal judgment may be rendered against him therefor . . ."

Similarly, Section 72-2-1, N.M.S.A., 1953 Comp., PROVIDES:

"All property, real, personal and intangible, not otherwise assessed and valued for purposes of taxation, shall be declared, listed, assessed and taxed in the county where it is situated on the first day of January . . ."

See also Sections 72-2-3 and 72-2-10.1, N.M.S.A., 1953 Comp.

A "no proration" opinion was rendered by this office on September 21, 1961 (Attorney General Opinion No. 61-89). However, the conclusion expressed therein was not based on any constitutional prohibition, but rather because:

"An express provision by the legislature would be necessary to afford relief in the form of a reassessment, the recovery of taxes paid under protest, **or proration of taxes to a taxpayer in such situation**, and in the absence of such provision the tax liability continues in the amount of the original assessment without reduction and **without allowance of proration** to such taxpayer for the tax due." (Emphasis added)

The Legislature has, since that time, enacted certain statutes which afford such relief, namely, Sections 55-12-8 and 22-9A-9, the latter enacted in 1972. Also see Section 72-7-26.

Section 22-9A-9, a portion of the 1972 Relocation Assistance Act, provides that:

"In addition to other payments authorized by the Relocation Assistance Act, the agency, as part of the cost of any program or project, may reimburse reasonable and necessary expenses incurred for:

* * *

C. the prorata portion of real property taxes paid which are allocable to the period subsequent to the date of vesting of title in the agency or the effective date of the possession of the real property by the agency, whichever is earlier."

Section 55-12-8, which is the State Highway Department Relocation Assistance Act (1971) provides the same authority as paragraph C of Section 22-9A-9, quoted above.

We conclude that each of these statutes is constitutionally valid and that they fill the void, and thus the objections, raised in Attorney General Opinion 61-89.

By: Oliver E. Payne

Deputy Attorney General