

Opinion No. 25-3869

November 3, 1925

BY: JAMES N. BUJAC, Assistant Attorney General

TO: Requested November 3, 1925, by Miss Isabel Eckles, State Superintendent of Public Instruction, Santa Fe, N.M.

All warrants issued to County Treasurers for payment are subject to taxes, interest, costs and penalties which should be deducted therefrom before payment of said warrant is made.

OPINION

You request an opinion as to whether or not the various County Treasurers of the state can lawfully withhold the payment of school warrants for taxes and interest, costs and penalties thereon.

§ 407, Chapter 133, Session Laws of 1921, provides:

"When any bills are allowed and ordered paid by the Board of County Commissioners, the same shall have stamped, written or printed on the face thereof by the clerk of said board, the following words: 'Subject, however, to the payment of any taxes, penalties and costs hereon due from the payee or any assignee, as shown by the tax roll of said county, which is to be deducted herefrom'; and any warrant, order or certificate drawn for the payment of any such bill or drawn by any clerk of the district court for the payment of moneys to any juror, or witness, out of the county treasury, shall have stamped, written or printed on the face thereof, the above words in quotation, which shall be so placed thereon by said clerk."

And § 408 of the same chapter reads:

"Whenever any bill, warrant, order, or certificate is presented to the treasurer of said county for payment, he shall first deduct therefrom the amount of taxes, penalties and costs thereon due by said payee or any assignee thereof, as shown by the tax rolls of said county, and pay over the balance, if any, from funds on hand out of which same is ordered paid, and issue a receipt for the amount of taxes, penalties and costs so deducted and paid."

From the language of the above quoted sections it seems clear that all warrants are subject to taxes, interest, costs and penalties which should be deducted from the warrant before any money is paid to the payee thereon. This is particularly true because by § 409 of the aforementioned Chapter the Legislature provided a penalty for the violation of §§ 407 and 408 by any officer.