

## Opinion No. 34-713

January 15, 1934

**BY:** E. K. NEUMANN, Attorney General

**TO:** Mr. George L. Reese, Jr., District Attorney, Carlsbad, New Mexico.

{\*106} Referring to your letter of January the 9th, enclosing copies of your opinion to D. C. Berry, County Treasurer, Lovington, New Mexico, and of the letter to Mr. John Mell, Special Tax Attorney, Santa Fe, New Mexico, wherein you request the opinion of this office as to the meaning of Section 19, Chapter 171, Laws of 1933.

Said Section is as follows:

"Sec. 19. 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 an amount equal to four per cent 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 half into a fund of the County from which the costs of sale shall be paid. \* \* \*"

We are of the opinion that the four per cent to be added to each item of taxes due and delinquent shall be added by the County Treasurer only at such time as it becomes the duty of said Treasurer under said law to notify the delinquent taxpayer that his property is to be sold for delinquent taxes on the date specified in said act.

It, no doubt, was the intention of the Legislature to provide for the four per cent charge simply in order to defray the costs of notice and sale of property for delinquent taxes and not its intention to impose a four per cent penalty upon those who might be delinquent but who would discharge such delinquency at a date prior to that date when it becomes the duty of the County Treasurer to notify the delinquent taxpayer of the proposed sale. We are lead to this conclusion by the following words, "designating such amounts as costs," and certainly no costs can accrue with reference to a delinquent in so far as the County Treasurer is concerned until such date when it becomes his duty to take the first steps preliminary to the tax sale.

Upon first glance said section sustains the interpretation you have placed thereupon but, after much study of said section in connection with the balance of the act, we are forced to an opposite conclusion. We are notifying the State Tax Commission of the opinion of this office. And, after having discussed same with Mr. Beall and Mr. Mell, they are accepting said opinion as their interpretation of said act and withdrawing any instructions that have heretofore been issued which in any way might conflict with same.