

## Opinion No. 35-1103

July 23, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. J. V. Gallegos, Attorney, Tucumcari, New Mexico.

{\*74} We have your letter of July 18, 1935, asking for our opinion upon certain questions relative to the recent decision of the Supreme Court in the Ackerman vs. Carlsbad case.

I call your attention to the fact that this case is pending upon rehearing, and you cannot safely rely upon it until the motion for rehearing has been determined. My understanding is that this opinion, as now written, holds that paving bonds of municipalities must be paid in numerical order when the bonds themselves, or the ordinance under which they were issued, so provide.

Your first hypothetical question is stated as follows:

"To make my question clear, suppose A, being a property owner and against whose property a paving lien is filed, becomes the owner by purchase of say bond No. 20 which is in the sum of \$ 500, may the City Treasurer accept or redeem this bond at par by paying A \$ 500, A in turn giving the City his check for \$ 500, the amount of paving due by him, and have his lien released? In this case we assume that bonds up to No. 10 only had been previously redeemed."

In my opinion, this question should be answered "no."

Your second hypothetical question is stated as follows:

"Suppose the City Treasurer has collected into the paving fund \$ 2,000 and there is now due \$ 6,000 interest on all the bonds, may he pro-rate the interest among all bond holders, or must he pay interest to bond holders in numerical order in full so far as the amount in the fund will go to the exclusion of bond holders whose bonds happen to have a larger number?"

In my opinion, the City Treasurer should pay the interest to bond holders in numerical order so far as the funds available will permit.

Both of the above questions are answered upon the assumption that the bonds in question, or the ordinance under which they were issued, provide for payment in numerical order.

I am also enclosing a copy of our opinion regarding the City Occupation Taxes.

By: QUINCY D. ADAMS,

Asst. Atty. General