

Opinion No. 37-1634

May 7, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. J. O. Gallegos State Comptroller Santa Fe, New Mexico

{*90} This will acknowledge receipt of your letter dated May 3rd attached to a letter to you from the Treasurer of Otero County wherein he inquires as follows:

"Am I correct in interpreting Chap. 180, Laws of 1937, as follows: --

(a) 1-3 of all interest (not including the 2% & 4% cost) shall be transmitted to the State Tax Commission, and the remaining 2-3 shall be distributed into the various funds along with the principal of such taxes.

(b) The 1-3 remittance shall also apply to 1936 taxes as same become delinquent.

(c) This law repeals that certain law wherein 10% of all delinquent taxes (not including current year) shall be transmitted to the State Tax Commission."

The pertinent section of the law in so far as parts (a) and (b) of the inquiry are concerned are as follows, quoting from Section 2 of Chapter 180, Laws of 1937, amending Section 20 of Chapter 27 of the Special Session Laws of 1934:

"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, at the date of sale and not before, an amount equal to two 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 one-half into a fund of the county from which the costs of sale shall be paid. In addition thereto, said county treasurer shall transmit to the State Tax Commission an amount equal to one-third of the interest collected upon such delinquent taxes. Any surpluses remaining in such fund of the county, at {*91} 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."

In so far as part (a) of the inquiry is concerned, we construe the foregoing section of the law as meaning that where there are delinquent taxes on **real estate property** which have gone to **tax sale certificates**, that the county treasurer shall add to each item of taxes due and delinquent an amount equal to two per cent (2%) of the amount of the tax delinquent, as costs, one-half of which amount so collected to be applied to the State Tax Commission Fund and the other half to go into a fund of the county from which costs of sale shall be paid, and any surpluses remaining in such fund of the county, at

the end of the fiscal year shall be transferred to the General County Fund. The foregoing, of course, has reference only to the two per cent (2%) cost collections for the purpose of defraying expenses of sale.

However, in so far as interest is concerned, said section of the law is construed as meaning that on all delinquent taxes on **real estate property**, irrespective of whether said delinquent taxes have gone to tax sale certificates or not, that one-third (1-3) of the interest collected thereon shall be transmitted to the State Tax Commission, and the remaining two-thirds (2-3) shall be distributed into the various funds of the county along with the principal of such taxes.

In so far as part (b) of the inquiry is concerned, we have answered the same under (a) above when we said that a one-third (1-3) remittance should be made to the State Tax Commission of all interest collected on delinquent taxes on real estate property, irrespective of any tax sale certificate, and this being so, the Otero County Treasurer is correct in construing the act as meaning that the one-third (1-3) remittance of interest collected shall also apply to 1936 taxes as the same become delinquent, limiting the same, of course, to interest collected on delinquent taxes on real property alone and not on personal property.

In this connection we wish to state that in a letter heretofore written by this office to the Treasurer of Socorro County, dated March 20, 1937, it was intimated that the one-third (1-3) interest to be credited to the State Tax Commission applied only to interest collected upon taxes delinquent on real estate property which has gone to tax sale certificates. In view of our present holding we wish to hereby modify our former opinion in so far as it related to the matter of the one-third (1-3) interest to be credited to the State Tax Commission.

In anticipation of probable future inquiries, may we also state that the one-half (1/2) of two per cent (2%) cost collections and the one third (1-3) interest collections under Section 2 of Chapter 180 of the Laws of 1937 to be credited to the State Tax Commission apply only on taxes on real estate property and not on taxes on personal property, and this in view of the fact that said Chapter 180, Laws of 1937, purports to amend Chapter 27 of the Special Session Laws of 1934, which deals solely with the collection of taxes on real estate and not personal property, and particularly in view of Section 38 of said Chapter 27 of the Special Session Laws of 1934, providing as follows:

"Nothing in this Act contained shall be construed or deemed as changing the method or manner of collection of delinquent taxes on personal property as now provided by law."

{*92} In part (c) of his inquiry the Otero County Treasurer no doubt has reference to Section 141-702, New Mexico Statutes Annotated, 1929 Compilation. That section of the law was expressly repealed by Section 40 of Chapter 171 of the Laws of 1933 and is no longer in force and effect.

Trusting the foregoing sufficiently answers your inquiry, I am

By: FRED J. FEDERICI,

Asst. Atty. Gen.