

**Opinion No. 39-3364**

December 27, 1939

**BY:** FILO M. SEDILLO, Attorney General

**TO:** Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico.

{\*127} In your letter of December 21 you inquire as follows:

"With reference to Chapter 141, Section 407 of the New Mexico Statutes Annotated, 1929 Compilation, is it your opinion that all school district warrants must have printed on the face of them that said warrants are subject to the payment of any taxes, penalties, and costs that are due from the payee or the assignee which are shown by the tax roll of said county.

Kindly advise if this applies to all warrants issued by school boards of education."

Insofar as is pertinent hereto the provisions {\*128} of Section 141-407, New Mexico Statutes, Annotated, 1929 Compilation, requiring **printing** on face of warrant that same is subject to payment of taxes, etc., due from payee or any assignee, apply only to warrants drawn for the payment of any bills allowed or ordered to be paid by the "Board of County Commissioners," and to warrants drawn by the "Clerk of the District Court," for the payment of monies to jurors and witnesses.

Since, as I understand it, warrants issued by school districts and boards are not allowed and ordered by the boards of county commissioners, such warrants need not necessarily show on their face that they are subject to payment of taxes, etc., due to the county from the payee or assignee thereof.

However, regardless of what appears on the face of **any** warrant payable out of the county treasury the fact remains that under the provisions of Section 141-408, New Mexico Statutes, Annotated, 1929 Compilation, the county treasurer must deduct taxes due the county from **any** warrant presented to him for payment. This office has heretofore so held. See Attorney General's Opinions Nos. 494 and 549.

It might be suggested that in those cases where money is payable by warrant out of the county treasury and not covered by Section 141-407, that there be printed on the face of the warrant in small type the verbatim provisions of Section 141-408 of the 1929 Compilation. This practice would give prospective good faith assignees first hand notice that the warrant is subject to deduction of any taxes owed the county by the "payee or any assignee," and thus there might be avoided an innocent purchase of a possible valueless warrant; that is to say, valueless to the assignee in that when he presents it to the county treasurer for payment he might otherwise be surprised to find that the payee or some other assignee ahead of him owed taxes to the county which are deductible from the warrant.

By: FRED J. FEDERICI,

Asst. Atty. Gen.