

Opinion No. 41-3960

November 26, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. J. D. Hannah Assistant State Comptroller Santa Fe, New Mexico

{*133} In your letter dated November 22, 1941 you state that the Village of Santa Rosa constructed a sewer system under authority of Section 90-2301 of the 1929 Code, but in the assessment as made and certified against the improved property, no amount was figured for interest on the certificates issued. Your question is whether interest may be collected at the rate of 6% upon the total amount assessed, or only upon delinquent payments, as is provided in Section 90-2305 of the 1929 Compilation. This section has been amended by Chapter 116, Laws of 1939, and in the amendment, as well as the original law, it is specifically provided that upon the payment of any installment or the whole of such assessment before the same is due, interest thereon shall cease from the date of such payment.

In view of this express language, the person collecting the money due upon said assessments could not collect interest upon the total amount assessed, but should collect interest only upon the installments that are delinquent.

Your second question is based upon Section 90-2304, 1929 Code, and you inquire whether the county treasurer shall issue tax sales certificates, and in general follow the law for the sale of real property when taxes thereon are delinquent.

This section has also been amended by Chapter 116, Laws of 1939, which provides in part as follows:

"In case any such lot or parcel of land so assessed is delinquent in the payment of such assessment or any installment of principal thereof or interest thereon the same shall be foreclosed and sold in the same manner now provided by statute for the foreclosure of mortgages on real estate, and at such sale said property shall be bought in by such municipality providing there is no other purchaser therefor."

Since the amendment has changed the procedure for collecting and enforcing payment of delinquent assessments, the procedure should be followed as provided in said law as amended.

Trusting that the foregoing sufficiently answers your inquiry, I am

By C. C. McCULLOH,

Asst. Atty. General