

Opinion No. 42-4096

June 2, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Earle Kerr, Director Income Tax Division Bureau of Revenue Santa Fe, New Mexico. Attention: W. S. Barnes Chief Auditor

{*203} This is in response to your recent inquiry as to whether or not interest on paving bonds is taxable under the New Mexico income tax act where such paving bonds are secured by a lien against the adjoining property.

In order to answer the above question it is necessary to determine whether or not paving bonds are general obligations of the community. Whether those paving bonds are general obligations depends upon several factors, including the language of the bond itself and statutes under which the paving bond is authorized.

There are several New Mexico cases which hold that special assessments are not taxes as such and consequently they imply that any bonds to cover assessments would not be general obligations.

I believe that the Division should stand on its position that a paving bond is not a general obligation and therefore not exempt as a municipal bond. If the bond is taxable, then the interest too is taxable.

There is a case up before the Supreme Court now (Munroe vs. City of Albuquerque) which may determine the question.

Trusting the above will be of {*204} some help to you, I remain

By WILLIAM R. FEDERICI,

Asst. Atty. General