

**Opinion No. 43-4382**

September 21, 1943

**BY:** EDWARD P. CHASE, Attorney General

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

In your letter dated September 20, 1943, you state that in a municipality having special assessments for paving the outstanding bonds can be paid without requiring the payment of all the assessments, and you inquire what is the status of unpaid assessments, and liens after the outstanding bonds for financing the paving program have been fully paid. You also inquire whether it would be possible for the municipality to cancel outstanding liens after the bonds are paid.

Article 4, Section 32 of the State Constitution provides as follows:

"No obligation or liability of any person, association or corporation, held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court."

Since the assessment constitutes a personal obligation as well as a lien against the property benefitted, the municipality would have no authority to release or cancel the obligations except upon payment thereof or in a proper proceeding in court.

Under Section 7-120, paragraph 3 of the 1941 Compilation it is provided that after the payment in full of bonded indebtedness, if there shall remain a balance in the interest or sinking fund of a municipality, this balance may be transferred to some other fund or applied toward budget requirements for the succeeding fiscal year, according to the discretion of the Comptroller. This law apparently contemplates that balances may exist or be built up in interest and sinking funds, and provides a method for its expenditure.

In view of the Constitution and the above mentioned law, I am of the opinion that the special assessments and the liens could not legally be released by the municipality in the absence of a court judgment, and that after the bonds are fully paid any additional collections should be used after transfer pursuant to your order.

By C. C. McCULLOH,

First Asst. Atty. General