

**Opinion No. 47-5095**

November 3, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** W. W. Nichols, Chairman Public Service Commission P. O. Box 561 Santa Fe, New Mexico

{\*104} We wish to acknowledge receipt of your inquiry of October 29, 1947, pertaining to whether or not the Commission has authority to waive interest on delinquent payments of inspection and supervision fees, as provided for by Section 72-609 of the New Mexico 1941 Compilation, when the Commission is convinced said payments were not made due to lack of knowledge of the existence of any such regulatory act.

According to your inquiry, the Commission, at a hearing, found the public utility in question delinquent in the payment of inspection and supervision fees in the sum of \$ 494.02, covering a six-year period.

Section 72-609 of the 1941 Compilation provides, in part, as follows:

". . . upon failure, neglect or refusal of any such utility to so pay, and from the due date of the delinquency, there **shall** be added to the amount due by the utility interest at the rate of one (1) per centum per month until paid, and the Attorney General in the name of the State shall bring suit to collect the same."

The language of this section is mandatory and it is therefore my opinion that once the Commission has found the owner of a public utility delinquent in the payment of inspection and supervision fees that they must also add to the amount due in delinquent payments the interest on same as computed under the terms of Section 72-609.

In view of the fact the weight of authority holds accrued interest to be a "debt", it would also preclude the Commission from waiving any interest that has accrued, for Section 34, Article 4 of the New Mexico Constitution prohibits the remission of debts due the State. See Central Bank and Trust Corp. v. State, 139 Ga. 54, 76 S. E. 587 and Epping v. City of Columbus et al, 117 Ga. 263, 43 S. E. 803.

It is therefore our opinion that the Commission lacks authority to waive the collection of interest where a utility is found to be delinquent in the payment of inspection and supervision fees.

Trusting the foregoing satisfies your inquiry, I am,

ROBERT V. WOLLARD,

Asst. Atty. General