

Opinion No. 53-5730

April 14, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller State Capitol Building Santa Fe, New Mexico

{*126} This is in answer to your request for an opinion upon the question of what disposition should be made of the sum of \$ 6,400 now held by the Lincoln County Treasurer representing funds received from a tax levy during the year 1950-1951 made by the Village of Green Tree to pay principal and interest of a bond issue for a water system of the Village which bond issue failed to be floated for the reasons that the Village was involved in a disincorporation proceedings at that time. Your request contains two questions: First, what should be the disposition of the principal sum of \$ 6,400 now held by the Lincoln County Treasurer and, second, would it be possible to transfer or to pay claims for \$ 1,000 against the Village of Green Tree from these funds.

Section 7-120 N.M.S.A., 1941 Compilation, as Amended, Laws of 1937, Ch. 233, Sec. 1, Laws 1937, Ch. 194, Sec. 1, sub-paragraph 3 provides as follows:

"3. Whenever there shall remain a balance in any interest of sinking fund of any county, municipality, school district or state institution, after the retirement and payment in full of the bonded indebtedness for which such interest and sinking fund was created, the state comptroller shall have power in his discretion and upon request by the officer or officers having charge of the expenditures of such funds, to transfer any such balance to any other fund and to authorize its expenditure or to require that such balance be held intact and applied toward meeting the budget requirements for the succeeding fiscal year."

In the question before us it would appear that the funds being the result of a tax levy to satisfy demands for principal and interest of a bond issue that was never floated, and upon which the two year limitation has run, Section 7-622 N.M.S.A., 1941 Compilation, as Amended, could be and would be construed in the same manner as funds derived under such bond issues in excess of those needed to pay the indebtedness and would be subject to such disposition as the Comptroller in his discretion and after request by the officer or officers having charge of the expenditures of such funds, would deem proper.

Therefore, it is the opinion of this office that upon a proper request from the proper officer or officers of the Village of Green Tree, the State Comptroller in his discretion could authorize transferring the sum of \$ 6,400 to the General Fund of that incorporated Village.

Answering question two regarding whether claims amounting to \$ 1,000 against the Village of Green Tree can be paid out of the General Fund {**127*} when such funds were derived as mentioned above, upon proper request of city officials, the validity and nature of these claims are facts which should be before the State Comptroller before he could authorize their payment. If the claims were authorized claims for the years in which they were incurred and simultaneous with the years in which sums were accrued under the levy mentioned above, there could be no doubt as to the merit of their being paid out of the existing General Fund.

We trust that this will answer your questions satisfactorily.

By: William J. Torrington

Assist. Attorney General