

Opinion No. 26-3906

August 4, 1926

BY: FRED E. WILSON, Attorney General

TO: Mr. R. H. Carter, State Comptroller, Santa Fe, New Mexico. Attention: H. G. Arnold, Assistant State Comptroller.

I am in receipt of your letter of July 15 in reference to the proper construction of § 9, Chapter 26, Session Laws of 1925.

This section of the statute deals with the distribution of delinquent taxes levied or assessed prior to the year 1924, and after making provision for the payment of ten per centum of the amount collected, and the payment of other expenses of the commission incurred in the collection of said taxes, provides for distribution of the balance in the following language:

"The remaining proceeds of levies for interest and sinking funds for outstanding bonds or debentures shall be distributed to said funds;

The remaining proceeds of taxes levied for 'state purposes' shall be remitted to the State Treasurer to be first applied to the payment of state certificates of indebtedness."

The following and last paragraph of said section then provides for the distribution of the balance by the county treasurer for certain county purposes.

§ 8 of Chapter 26 requires that all delinquent taxes shall be paid to the county treasurer. Thus the county treasurer has in his possession all delinquent taxes collected under the provisions of said chapter. The question is what portion of these taxes is the county treasurer required to remit to the state treasurer, and what portion of said taxes is he authorized to retain and distribute for county purposes.

It is my opinion that the county treasurer is required to remit to the state treasurer all taxes levied for state purposes, including the levies for the current school fund and the state road fund, after deducting the ten per cent and the expenses from the gross amount, as authorized by the first paragraph of § 9.

To construe this section so as to enable the county treasurers of the various counties to retain the delinquent taxes collected for the current school fund, and to distribute same for county purposes, would, in my opinion, render such statute unconstitutional. This for the reason that § 4 of Article 12 of the Constitution makes the annual tax levied upon all taxable property in the state for the maintenance of the public schools a part of the current school fund, and requires that said current school fund be distributed among school districts of the state in a certain manner. I do not think the Legislature has the power to take taxes which are a part of the current school fund, and which were levied

for that purpose, and authorize the county treasurer to use the same for county purposes.

Therefore, for the above and other reasons which it is unnecessary to enumerate, I believe the above statute should be construed so as not to render same unconstitutional. Giving it such a construction, I think it is the duty of the county treasurers to remit to the state treasurer all taxes levied for state purposes, including the levy for state roads, the levy for the current school fund, and the levy for general state purposes.

When such taxes are so remitted, I think it is the duty of the state treasurer to distribute that portion of said taxes to the state road fund, and the current school fund, which properly belong to those funds in proportion to the respective levies, and to apply the levies for general state purposes first to the payment of state certificates of indebtedness, as required by one paragraph of § 9 of Chapter 26.