

## Opinion No. 33-689

November 17, 1933

**BY:** E. K. NEUMANN, Attorney General

**TO:** Hon. Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{\*95} This has reference to the letter from Mr. Rupert F. Asplund, which is enclosed in your letter of November 15, 1933.

The question presented is in connection with the payment of special improvement bonds issued for the purpose of constructing paving and sewers in Santa Fe. When a certain series of these bonds mature and there are not sufficient funds to pay all of the bonds, the question arises as to what order they should be paid in or whether they should be paid pro rata, to the extent of the money available. I understand that the particular bonds referred to provide that they are to be paid in numerical order.

In an opinion of this office under date of April 25, 1933, No. 589, this question was discussed and we gave our opinion that such bonds should be paid in the order of their serial numbers.

The question now presented, as I understand Mr. Asplund's letter, is, may the holder of a matured bond of a high serial number, which would not be paid in the ordinary course of events, under the opinion above referred to, use the same to meet a special assessment against his property, which is located in the same improvement district as that in which the bond was issued? In my opinion this question should be answered in the negative. To permit such a transaction would be, in effect, to give the bondholder a preference to which he is not entitled. Ordinarily taxes are not payable in municipal bonds, county warrants, etc., or in anything except cash. 61 C.J. 964. While a special assessment is not for all purposes considered the same as a tax, I can see no reason why it should not be the same in so far as the medium of payment is concerned.

Improvement bonds issued in this state are not secured by any particular property within an improvement district, but by assessments made upon all the property in the district. The holder of such a bond has no right to have it paid by the assessment on any particular piece of property, and it would appear to me that this is true, even where the bondholder and the property owner are one and the same person.

Even if the bonds were to share pro rata in the available funds, a bond whose pro rata share is \$ 50.00, for example, should not be accepted in payment of assessments for more than that amount, although its par value might be \$ 100.00.

For the reasons herein stated, as well as those given in my previous opinion, I believe that Mr. Asplund's question should be answered in the negative.

By: QUINCY D. ADAMS,

Asst. Attorney General