

Opinion No. 35-944

March 15, 1935

BY: FRANK H. PATTON, Attorney General

TO: Mr. Abran Garcia, County Treasurer, Sierra County, Hillsboro, New Mexico.

{*53} This is in reply to your letter of March 12, 1935, in which you ask the following questions:

1. "Please advise if in view of Chapter 133, Joint Committee Substitute for House Committee Substitute for Senate Bill No. 3, the county treasurers are required to collect the 2% costs provided for in Section 20, Chapter 27 of the 1934 Special Session Laws, where a Tax Sale Certificate has been issued, and the taxpayer is taking advantage of the provisions of said Chapter 133.
2. Also please advise, in a case where a taxpayer paid the principal of his taxes but refused to pay the interest and {*54} penalties, prior to the enactment of Chapt. 133 for Sub. Senate Bill No. 3 above, does that automatically makes his taxes paid in full and the county treasurer may lawfully mark the records paid in full?"

Your first question should, in my opinion, be answered in the negative. According to my interpretation of Chapter 133 of the Laws of 1935, the only costs which the taxpayer is required to pay are "court costs." The costs mentioned in Section 20, Chapter 27, Laws of 1934 are not court costs.

As to your second question, I believe it also should be answered in the negative. Chapter 133 above mentioned does not, in my opinion, act retroactively. Ordinarily a statute acts prospectively unless a contrary intention plainly appears from the language thereof. If it should be interpreted in this case to apply in cases where payment of the principal was made prior to the enactment of said law, it would work an injustice in many cases. A taxpayer who had paid both the principal and interest of his taxes prior to the passage of Chapter 133 might reasonably come in and ask for a refund of the interest and penalties but unless the same had been paid under protest, there would be no way of making such refund. Consequently, under an interpretation as suggested by your question he would be discriminated against.

There are undoubtedly reasons why an interpretation might be placed upon the Act contrary to my interpretation but after giving the matter serious consideration, it is my opinion that the taxpayer who makes payment of the principal of his taxes prior to the passage of said Chapter 133 can not benefit by the provisions thereof.

Trusting that the above fully answers your inquiry, I am

By QUINCY D. ADAMS,

Asst. Atty. General