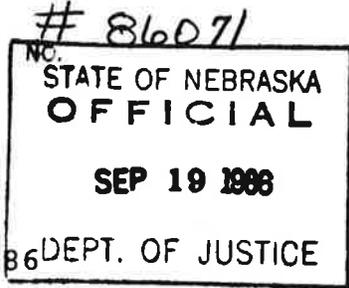


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: September 10, 1986

SUBJECT: Interest Rate on Delinquent Property Taxes

REQUESTED BY: Senator Elroy M. Hefner
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion concerning the constitutionality of legislation proposing to reduce the present interest rate charged on delinquent property taxes. In addition, you have also asked whether legislation of this nature may constitutionally be applied retroactively so as to require the payment to taxpayers of refunds of interest on delinquent taxes previously paid. While you have not provided any specific legislative proposal for our consideration of these matters, we will attempt to provide some general guidance regarding the questions raised.

As to your first question, initial consideration must be given to the potential effect of Article VIII, Section 4, of the Nebraska Constitution, which provides, in pertinent part:

Except as to tax and assessment charges against real property remaining delinquent and unpaid for a period of fifteen years or longer, the Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever,

In Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936), the court, while finding that a statute permitting delinquent real property taxes to be paid in ten equal annual installments contravened the constitutional provision prohibiting commutation of taxes in any form, stated that interest, penalties, and costs

L. Jay Bartel
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Janie C. Castaneda

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imposed for nonpayment of taxes are no part of the tax, and thus may be remitted by the Legislature without violating the proscription contained in Article VIII, Section 4. Subsequently, in Tukey v. Douglas County, 133 Neb. 732, 277 N.W. 57 (1938), the court reaffirmed its position that the various impositions made for the failure to pay taxes, whether designated as interest, penalties, or costs, are all in the nature of penalties, and are not part of the tax. Furthermore, holding that penalties for nonpayment of taxes are punitive in nature, and that their remission by the Legislature was not forbidden as arbitrary class legislation, the court in Tukey, supra, stated:

We necessarily conclude that interest charged against a delinquent taxpayer is in fact a penalty, that it is not a part of or incident to the tax and exists only by legislative pronouncement, that the legislature authorizing it has the power to remit or waive the penalties on unpaid and unsold taxes by a repeal of the original law or a new statute expressly doing so, and that a statute purporting to waive or remit a penalty is one of grace and not subject to the uniformity provisions of section 18, art. III of the Constitution.

133 Neb. at 738-39, 277 N.W. at 60.

Therefore, based on the foregoing, it is our conclusion that, consistent with the principles enunciated in Tukey v. Douglas County, supra, the Legislature may validly enact legislation to reduce the present interest rate imposed on delinquent property taxes.

Your second question concerns whether the Legislature may enact legislation reducing the interest rate on delinquent property taxes and apply such legislation retroactively so as to require the payment to taxpayers of refunds of interest on delinquent taxes previously paid.

As a general rule, a statute may not operate retroactively where it would impair a contractual obligation or interfere with a vested right. State ex rel. Douglas v. Nebraska Mortgage Finance Fund, 204 Neb. 445, 283 N.W.2d 12 (1979). See, Neb. Const. Art. I, Section 16. While there appears to be no Nebraska case law specifically addressing the issue you raise, the Supreme Court of Washington, in Henry v. McKay, 164 Wash. 526, 3 P.2d 145 (1931), held the state could, by retroactive legislation, reduce the interest rate on unpaid delinquent taxes without impairing any contractual obligation or vested right. See generally, 72 Am. Jur. 2d State and Local Taxation, §§863-864 (1974).

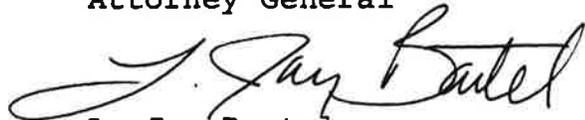
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With respect to the requirement of the retroactive payment of refunds of interest paid on delinquent taxes already collected, however, different constitutional considerations may arise which would render invalid such a requirement. In State ex rel. Crotty v. Zangerle, 133 Ohio St. 532, 14 N.E.2d 923 (1938), the court held a statute requiring that delinquent real estate tax penalties and interest properly paid between certain specified dates be refunded from the county treasury, without regard to whether the penalties and interest had been distributed to the taxing subdivisions entitled to receive them, was unconstitutional as denying equal protection of the law.

As was the case under Ohio law as described in Zangerle, supra, Nebraska law specifically provides for the distribution of interest collected on delinquent property taxes among the various governmental subdivisions and municipal corporations within the county. Neb.Rev.Stat. §77-1772 (Reissue 1981). Thus, it would appear that legislation imposing a refund requirement similar to that invalidated in Zangerle, supra, may well be declared unconstitutional on equal protection grounds.

Sincerely,

ROBERT M. SPIRE
Attorney General



L. Jay Bartel
Assistant Attorney General

JLB:jem

cc: Patrick J. O'Donnell
Clerk of the Legislature

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APPROVED:


Attorney General