

Opinion No. 47-5116

December 18, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. B. G. Dwyre State Highway Engineer Santa Fe, New Mexico

{*119} We wish to acknowledge receipt of your inquiry of December 15, 1947 pertaining to whether or not the State Highway Commission can make payment to the contractor of the Otowi-Pojaque project 75% of the 15% presently retained by it in view of the fact the contractor has been unable to finish said project due to the fact that steel necessary to finish said project has not been received by the State.

From your letter, we assume the contractor has already been paid partial payments based on progress estimates, totaling 85% of the contract price for the work to be done. Section 58-237 of the New Mexico {*120} 1941 Compilation provides in part as follows:

"Partial payments may be made on any contract for highway improvement, under the provisions of this act, as the work progresses. Progress estimates shall be based on materials in place and labor expended thereon, but **no more than 85% of the contract price of the work** shall be paid in advance of the full completion of such contract and its acceptance by the State Highway Engineer . . ."

In view of the foregoing statute, we are of the opinion that the State Highway Commission cannot make the advancement requested.

Trusting the aforementioned satisfies your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General