

## Opinion No. 49-5210

April 20, 1949

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** L. E. Wilson Administrative Engineer State Highway Department Santa Fe, New Mexico

{\*34} We wish to acknowledge receipt of your letter of April 6, 1949, regarding the authority of the Highway Commission to pay the claim of Armstrong & Armstrong, General Contractors of Roswell, New Mexico.

It is our understanding that the Armstrong firm was the successful bidder on Federal Aid Project No. S-58(5) under the terms of which the firm agreed to construct approximately 18.004 miles of highway for the sum of \$ 146,942.65. Prior to the competitive bidding the Armstrong firm, like all other organizations, had complete access to the Proposal, Contract, Bond and Special Provisions pertaining to Project No. S-58(5). Among other things, the Highway Department showed various sources of surfacing material in the vicinity of the project which might be used, but such information was stated to be for "informational purposes only".

The Armstrong firm proceeded with the project and used one of the pits as a source of surfacing material but found that the material failed to meet specifications of the contract. As a result the Armstrong firm moved to another area to obtain surface materials. The company is now claiming that they are entitled to approximately \$ 3,000.00 as a result of the cost incurred in having to abandon one source of material and to obtain another.

The Armstrong Company was one of a number of bidders on this job. The information regarding the availability of surfacing material was supplied for "informational purposes only" and not as a representation that such surfacing material would meet the specifications. The Armstrong firm was under no obligation to use any of these areas; it could have developed its own source of surfacing material or purchased such material provided only that it meet the minimum specifications set forth in the contract.

It is, therefore, the opinion of this office that the payment to the Armstrong Company is limited to the amount set forth in the contract and it is not entitled to any additional reimbursement.