

Opinion No. 50-5300

June 1, 1950

BY: Joe L. Martinez, Attorney General

TO: E. R. Cooper Assistant District Attorney Fourth Judicial District Las Vegas, New Mexico

{*156} Receipt is acknowledged of your letter dated May 10, 1950 in which you request an opinion as to whether or not, in the purchase of a right-of-way by the County of San Miguel for public highways, either through easements or through condemnation proceedings, the purchase of land for channel changes is a part of the right-of-way for public highways, or whether it is a part of the cost of the project.

Section 58-228 of the 1941 Compilation reads as follows:

"The rights of way deemed necessary by the state highway commission for highways constructed under supervision of said commission shall be acquired by the county by donation by the owners of the lands through which such highways shall pass, or by agreement between such owners and the board of county commissioners of the county, or through the exercise of the power of eminent domain in the manner provided by law for acquiring property for public uses. Upon request of the board of county commissioners of the county through which said highway is located, the state highway engineer is authorized and directed to acquire a right of way for any such highway, and upon the execution and delivery of a good and sufficient contract or deed for the conveyance of such right of way, the state engineer is authorized and directed to issue his voucher for the payment to the owner or owners of any lands required for such right of way in the sum or sums agreed upon between such owners, said state highway engineer and the board of county commissioners, or as may be determined by appraisal, and when presented with such voucher by the state highway engineer it shall be the duty of the state auditor to issue a warrant or warrants for such amount or amounts, and the state treasurer shall pay the same out of any moneys in the state road fund furnished by said county for the construction {*157} of said highway. It shall be the duty of the district attorney for the county wherein such lands are situate to commence and prosecute an action to acquire such right of way upon request of the board of county commissioners of the state highway commission."

There is no question that counties have to pay for rights-of-way that they purchase and channels are parts of the right-of-way and not necessarily part of the cost of project. The County of San Miguel will have to pay for the channel changes, as they are part of the right-of-way and the State Highway Department will have to maintain them after they are built or constructed.

This office in Opinion No. 4913 held that a fence was part of a right-of-way. I am enclosing a copy of this opinion.

It is, therefore, my opinion that channels are part of a right-of-way acquired by the county and that the county will have to pay for the cost of same.