

Opinion No. 51-5439

October 3, 1951

BY: JOE L. MARTINEZ, Attorney General

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

{*146} This is in reply to your letter of October 2, 1951, in which you request an opinion as to whether the use of money from the State Road Fund for the operation and maintenance of the State Automobile Pool would constitute such a diversion of road user taxes as to give rise to a possible loss of Federal Aid highway funds under the terms of Sec. 12 of the Hayden-Cartwright Act (48 Stat. 993).

I call your attention to the opinion rendered by this office on August 27, 1951, No. 5404, addressed to you, concerning the question of the assessment by the Legislature of a charge against the State Road Fund to be paid over to the State General Fund to aid in defraying the costs of general administration overhead of the State Government. In that opinion it was held that the use of road fund money as proposed by the Legislature would be such a diversion as would cause the loss of Federal Aid funds under the terms of the Federal Aid Highways Act.

The expenditure of road funds to operate the State Automobile Pool, insofar as the servicing or care of automobiles of State Departments or Agencies other than the Highway Department would, in practical effect, constitute expenditure of road funds for paying a portion of the cost of the general administrative overhead of the State Government.

The opinion of this office of August 27 is applicable to your present question. In my opinion, expenditure of road fund money for operation of the State Automobile Pool for motor vehicles other than those of the State Highway Department would constitute a diversion of road user taxes so as to result in the withholding of federal funds under the terms of Section 12 of the Hayden-Cartwright Act (48 stat. 993).