

Opinion No. 52-5591

September 12, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Robert D. Castner State Auditor State Capitol Building Santa Fe, New Mexico

{*301} You have asked whether you should honor any purchase vouchers covering expenses of the State Highway Department relative to grading and street improvements, off-street parking, driveways, etc., around the State Capitol Building. No specific vouchers have been presented, as we understand it, and your request is anticipatory. This opinion, therefore, must be general in nature, as no specific problem is presented.

It is our understanding that the Highway Commission has entered into a contract with W. C. Kruger & Associates reciting that the Commission intends to construct public highways with walks and adjacent space, if necessary, for the control of traffic, and to reconstruct bridges and drainage facilities in connection with said highways, and to replace and replant areas adjacent to said highways, which have been disturbed, so that said areas will not be out of keeping with the surroundings, and that it will pay Kruger and Associates a fee for their services as architect engineers on said projects. We assume that any other contracts made by the Commission will be within the general purposes set forth in the Kruger contract.

By Constitutional Amendment, Article V, Section 14 (1951 Supplement), the State Highway Commission was empowered and charged with the duty of determining all matters of policy relating to state highways and public roads. At the time this amendment became effective, the ruling in Springer Transfer Company v. Albuquerque, 44 N.M. 407, to the effect that the Highway Commission had no authority to designate as a state highway an underpass in a city street not connected with or intended to be a part of a state highway, was controlling. Based largely on this ruling, the Attorney General's Opinion No. 4519 was published stating that the Commission had no authority to acquire, finance, construct, maintain and operate off-street parking facilities in municipalities. The reference to this opinion in opinion No. 5555, June 22, 1952, is for illustrative purposes only, and in no way an indication that such is still the law in New Mexico.

If the Highway Commission is empowered to determine all matters of policy relating to state highways and **public roads**, it would appear that they could now provide that an isolated street is a public road, and that they are no longer limited to construction on state highways only, and that the policy making power formerly held by the legislature with reference to state highways and public roads is now in the Commission. If the Commission was limited to state highways only by the amendment, the use of the term "and public roads" is meaningless.

The Constitutional Amendment setting up the Highway Commission and providing that it shall have complete charge of the construction, improvement and maintenance of public roads and bridges, must be read consistently with other provisions of the Constitution. Article IV, section 30 provides:

"Except interest or other payments on the public debt, money shall be paid out of the treasury only upon appropriation made by the legislature. No money shall be paid therefrom except upon warrant drawn by the proper officer. Every law making an appropriation shall distinctly specify the sum appropriated and the **object** to which it is to be applied."

In *Gamble v. Velarde*, 36 N.M. 262, the Supreme Court, in construing {302} Article IV, Section 30 of the Constitution, held:

"Even if a maximum sum be designated, a loosely defined object amounts to a surrender of the purse strings."

It would appear, therefore, that the only way the two constitutional provisions can be by holding that the legislature shall designate the **object** to which the appropriation is to be applied, but that the policy relating to that object, be it state highways or public roads, has been delegated to the Commission.

Reviewing the appropriation statutes, by which the Commission receives its funds, one can only conclude that the object of all of them is the construction, maintenance and improvement of state highways and public roads. (See Attorney General Opinion No. 5588). Section 58-225 N.M.S.A., 1941 does state that all moneys accruing to the state road fund shall be expended on the highways comprising the system of state roads provided for by this act. This provision was originally in Section 19, Chapter 38, Session Laws of 1917. This law provided for a property tax which has not been used since 1928. *State v. Romero* 53 N.M. 402. None of the appropriations now providing funds and continued by Chapter 227 of the 1951 Session Laws attempt to so limit the expenditures.

The object of all of these appropriations is, therefore state highways and public roads. That is as far as the Legislature can go. From there on, the policy and the expenditures of the funds is up to the Highway Commission. Should the legislature pass a law appropriating \$ 50,000 for the construction of a steel bridge across the Pecos River as part of a highway, the object of the law would be highway bridges. The material of which the bridge would be constructed would be within the policy making power of the Highway Commission. If the Legislature limited the use of road funds to a system of roads to be laid out in any particular manner or by a state net, it would be invading the field now given by the people to the Highway Commission, and the limit of the road funds to a system of state roads provided by any act of legislature would be unconstitutional.

Of course, the amendment itself limits the expenditure of the funds to "construction, improvement and maintenance of Public roads and bridges," and if the Commission attempted to use the funds for beautification of the capitol grounds or construction and improvement of state parks, it would be going beyond its authority. By giving it power to determine all matters of policy relating to state highways and public roads, the constitutional amendment would undoubtedly now permit it to construct an underpass on a public highway, even though the highway was also a city street, and would permit off-street parking facilities, as well as sidewalks, if deemed necessary for the flow of traffic in the opinion of the Commission. Certainly drainage facilities and similar matters, and even beautification of portions of the highway if not unreasonable, would seem to be within the discretion of the Commission.

In construing the power of the Commission to spend the funds which have been appropriated by the Legislature, many of which refer to federal aid road laws, the court might look at these federal laws to ascertain the definition of public highways and the limitations upon spending of federal aid funds. In such case, it would appear that the commission is upon firm grounds. Although Section 55, Title 23, U. S. C. A. limits the expenditures of state funds from motor vehicle registration fees, licenses, and gasoline taxes to "the construction, improvement and maintenance, of highways, and administrative expenses in connection therewith, including the retirement of bonds for which such revenues have been pledged, and for no other purposes," Section 10A of the same title permits the planting and maintenance of shade trees along highways, and Section 10b permits the {303} including of roadside landscape developments, including sanitary and other facilities suitable for the accommodation of the public, while Section 111, same title, permits the Commissioner of Public Roads, when necessary, to facilitate the flow of traffic of a strategic network forming by passes around and connections into and through municipalities to develop off-street parking facilities. This section provides that when any state permanently prohibits the parking of vehicles within any roadway or street of any through highway over which the state has been legally vested with control, to construct off-street parking facilities.

It would appear, therefore, that the Kruger contract is well within the powers of the Commission, and unless specific actions are performed outside of the purposes of the contract and tending more to be within the province of the capitol building improvement commission, there is probably no reason for refusing payment. Each contract, of course, must be given separate consideration, but perhaps the general discussion presented in this opinion will be helpful to you in determining each separate matter as it arises.