

Opinion No. 54-6002

August 16, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*463} In your letter dated August 3, 1954, you refer to us a letter from the City Clerk of Santa Fe, requesting an opinion as follows:

1. Regarding the legality of reimbursing the General Fund from General Obligation Bond issue proceeds for engineering services rendered by personnel being paid from the General Fund; and
2. Regarding the legality of the use of an additional engineer for the purpose of supervising street and sewer construction projects with salary payments from the General Fund proceeds, said payments to be reimbursed to the General Fund by bond issue proceeds at monthly intervals.

In connection with a similar question, I am enclosing a copy of Opinion No. 5863 for your information, wherein it was held that a proportionate part of the services rendered by city employees to the water department could be paid for out of water department revenues in proportion to the services rendered in connection with the water department.

Based upon the same reasoning, it is felt that bond proceeds may be spent for the proportionate part of the services of the city engineer and assistants, or of an additional engineer based upon the services actually rendered in connection with the projects for which the bonds were issued.

In a Mississippi case, Mayor and Board of Aldermen of the City of Natchez vs. Engle, 51 So. 2d 564, this language appears:

"And the governing authorities of the municipality may pay for such engineering service and legal service and other incidental expense connected with the issuance and sale of the bonds and the construction of such public works out of the proceeds of the sale of the bonds, or perhaps out of the General Fund of the municipality."

In line with our previous opinion and the additional authority cited herein, payments may be made directly from the bond proceeds for service rendered in connection with the project involved but if payments of engineer's salary and incidental expenses have previously been made validly out of the General Fund, bond proceeds may not be used to reimburse the General Fund for the proportionate part of such service rendered in connection with the projects involved for which the bonds were issued. Such reimbursement, in effect, would be transferring the bond proceeds to the General Fund

of the municipality for use for any purpose for which the General Fund may be spent and we believe this procedure would be highly questionable.

Although the facts are different in the case entitled *McArthur vs. City of Cheboygan*, 120 N.W. 575, 156 Mich. 152, the Court held that a transfer of a part of the proceeds from the sale of bonds to the General Fund of the municipality is a {*464} diversion of the fund from the proper and intended use.

Based upon our conclusion, we suggest that in the future the proportionate expenses of services directly connected with the specific projects for which bonds are issued be paid currently from the bond proceeds rather than being paid from the General Fund with the view of reimbursing the General Fund thereafter from such bond proceeds.

We do believe, however, that any items properly chargeable to bond issue funds which have been paid out of General Fund during the past month, pending the issuance of this opinion, can be reimbursed to the General Fund.

By: C. C. McCulloh

Assist. Attorney General