

## Opinion No. 55-6134

March 22, 1955

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. D. M. Smith, Jr., State Comptroller, Santa Fe, New Mexico

This is in reply to your request for opinion concerning payment of moneys out of the County Road Fund in Catron County, New Mexico. It is our understanding from your letter and the letter from the Chairman of the Board of County Commissioners of Catron County that an extension of the road from Reserve to Frisco Plaza is desired below the Plaza. It is further stated that in order to extend this road that it will be necessary to purchase right of way over certain private land. The two questions which you ask in connection with this situation are as follows:

"1. Would the proposed purchase of private land by the County, for the purpose of providing right-of-way on which to build the new 'timber access road' to the millsite, which road would also be a continuation of the present road from Reserve to Frisco, be properly chargeable to the County Road Fund budget, and properly payable with County Road Fund cash, if so authorized by the Board of Catron County Commissioners?

2. If your opinion is decided in the negative regarding the first question, would the cost of the proposed new road, including the purchase of the right - of - way, be properly chargeable to a portion of the County Road Fund budget allocated for construction of the new road if offset entirely by cash derived from forest reserve money distributed by the Federal Government, through the State Treasurer, to the County?"

To begin with, I am assuming that the statutes applicable to alteration or establishment of county roads has been complied with. I have in mind § 55-4-5 et seq., NMSA, 1953, and the requirements therein. Should everything pertaining to establishment or alteration of such roads be in order, then it is the opinion of this office that money from the County Road Fund may be used to purchase the right of way. Your question No. 1 is, therefore, answered in the affirmative.

Section 11-3-3, NMSA, 1953, in part, reads as follows:

"Provided further, that onehalf of such moneys, as aforesaid, accruing to any such county and duly remitted to the county treasurer thereof shall be by him credited to the county road fund, from which expenditures may be made under the authority of the board of county commissioners upon roads within forest reserves in such counties **and upon other roads in such counties deemed by the boards of county commissioners to be necessary or convenient to the public.**" (Emphasis ours)

This section has to do with the disbursement of revenues derived from forest reserves and turned over to the counties by the United States Government. The language underlined above is called to your attention and under this it is the opinion of this office that forest reserve revenues allocated to the County Road Fund may be used for the purchase of right of way over private lands if the Commissioners deem such to be necessary and convenient to the public. It is to be noted that the latter statute does not restrict the expenditure of such moneys to roads within the forest reserves, but the discretion as to where these moneys will be employed is left with the County Commissioners. Further, we believe that authorization to spend "upon roads" is broad enough to cover the situation where the county is seeking to establish a road and needs to purchase rights of way in connection therewith. Therefore, although we have answered your first question in the affirmative, we believe that question No. 2 may also be answered in the affirmative.

We are returning herewith the letter from the Chairman of the Board of County Commissioners of Catron County, which you forwarded with your request.

We trust that the foregoing answers your inquiries satisfactorily.

By Santiago E. Campos

Assistant Attorney General