

Opinion No. 56-6430

April 26, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

You have requested the opinion of this office as to the legality of payment from bond funds under the following set of facts.

The City of Clovis issued bonds for the purchase and improvement of a municipal airport site. A certain tract of land was selected and before money could be received by the City from the sale of the bonds it became necessary to post \$ 10,000.00 to secure the site for the City. By virtue of an agreement between the City and 22 civic minded citizens of the City, the citizens posted the necessary \$ 10,000.00 to protect the right of the City to secure the land. At a later date, the Department of the Air Force objected to the site selected because of changes which it desired to make in the Army Air Base in the vicinity of Clovis which would make the site selected dangerous to both civilian and Air Force personnel. It, of course, then became necessary to abandon the proposed site and forfeit the contract. The question presented is whether or not the City has the right to reimburse the citizens, who advanced the sum of \$ 10,000.00 for the use and benefit of the City, from the moneys which it has derived from the sale of the Airport bonds.

It is, of course, obvious that if the City of Clovis had been in possession of the bond moneys at the time it could and would have posted the \$ 10,000.00 itself, and that such expenditure would have been proper.

In our opinion, the individuals involved were acting as agents of the City, and certainly in that capacity are entitled to be reimbursed for moneys which they spent on behalf of the City where the moneys were expended for a legitimate municipal expenditure. The fact that the Air Force's change of plans has made the use of this site impractical has nothing to do with the right of the citizens to secure reimbursement.