

Opinion No. 56-6438

May 4, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

On May 3 you requested an opinion of this office as to whether or not the State Highway Department may use a portion of its funds and share in the cost of flood control, in cooperation with Bernalillo County and the City of Albuquerque.

The State Highway Commission, in Article V, Section 14 of the State Constitution, is charged with the duty of supervision and "general charge" of all the highways and bridges maintained with State aid. It would clearly follow, therefore, that the State Highway Department may do anything which is reasonable to protect existing highways from damage.

So far as the legality of the use of the money in cooperation with the City and the County and as to whether such action would violate Article IX, Section 14 of the State Constitution, we cite the case of Hutcheson vs. Atherton, 44 NM 144, 99 P. 2d 462, wherein the Court held that a donation to a private group would be illegal but that the expenditure of the money by the public group for a public purpose would not be illegal.

We suggest that the three agencies enter into a common contract, if that is the action they feel they should take, for the protection of the highways and other flood control measures concerning the protection of the highways. Thereby, each agency would retain control, contractually, of its funds. We do not state, however, that this is a necessary requirement but only make this as a suggestion.

The State Highway Department may engage in any and all activities which will help preserve and maintain the highways of the State and, if it is necessary to build retaining dams for this purpose, we see no legal prohibition to that construction.

It likewise follows that the county may spend moneys from its Road Fund in the same manner to construct dams which will protect county roads.

Therefore, it is the opinion of this office that the State Highway Department may and has the duty to protect and preserve the highways of the State under the Constitution and laws of this State and that engaging in a cooperative project with the City of Albuquerque and the County of Bernalillo, if such is deemed to be necessary for the protection of the highways, would be a legal expenditure.

We sincerely hope this answers your inquiry.