

Opinion No. 56-6494

July 13, 1956

BY: RICHARD H. ROBINSON, Attorney General

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

You have turned over to us a copy of a concession agreement executed between Hazel A. Hogle and the State Highway Department for the operation of a so-called coffee shop in the new Highway Department Building. You have asked our opinion as to the legality of Article III thereof wherein the concessionaire agrees to pay \$ 100.00 per month to the Highway Commission for the use and occupancy of the premises together with certain payments for utilities, and also agrees to pay \$ 100.00 per month for promotional and operational services and advice to the State Highway Employees Association.

You asked if the \$ 200.00 per month rental income to the Highway Commission must not be spent through use of proper vouchers and state warrants.

The concession agreement specifically provides that only the sum of \$ 100.00 per month plus the utility charges are to be paid to the State Highway Commission. These sums certainly must go to the State Treasury and can only be withdrawn upon proper vouchers and state warrants. The \$ 100.00 payable to the State Highway Employees Association, however, never becomes state money any more than sums paid to others employed in the concession by Mrs. Hogle would become state money.

By Article III the Highway Commission determined to make one of the conditions of the concession the employment of the Association by the concessionaire. We do not believe that we can say that such is unreasonable and beyond its power. If the Board of Finance concludes that the \$ 100.00 per month plus the utility charges is sufficient for the concessionaire's use of the state property, it may approve the agreement. The \$ 100.00 paid to the Association never becomes state money, according to the agreement.

We trust this answers your inquiry, however, this opinion is based solely upon the agreement as submitted.

By Santiago E. Campos

Assistant Attorney General