

Opinion No. 59-121

August 26, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. A. E. Hunt Director Department of Finance and Administration Santa Fe, New Mexico

{*187} This opinion is in response to your recent request following inquiry from the Honorable Dorothy I. Cline, Chairman of the Board of County Commissioners, Bernalillo County, on the following questions:

1. May cigarette tax funds designated by statute for recreational purposes be used for planning in connection with such purposes, the planning to be performed by another municipal body upon a reimbursable basis?
2. May funds designated by statute for road improvement and maintenance purposes be used for the preparation of a road plan if the planning is to be performed by another municipal body upon a reimbursable basis?

In our opinion, the answers to your questions are as follows:

1. Yes.
2. Yes.

Miss Cline, in her letter to you, advises that she contemplates preparing a master plan for the county which would include (1) a plan for roads and transportation, and (2) a plan for park-recreational areas and facilities that would be developed and used primarily for juveniles. In the preparation of this plan, it is contemplated that certain of the services will be performed by the City Planning Department of the City of Albuquerque which will in turn bill the county for the work performed. In this connection, Miss Cline wishes {*188} our opinion as to whether the funds designated for the above purposes by Sections 72-14-14 and 64-11-12, N.M.S.A., 1953 Comp., (PS), may be used for reimbursing the city for the services performed as described. Doubts were created as to such use by our Opinion No. 59-81, dated July 28, 1959. This opinion supplements the views expressed therein.

As pointed out in the above referenced opinion, it is our view that planning may be construed as falling within the intention or meaning of the statutory purposes. However, we expressed the opinion that "lump sum" transfer of funds to the planning commission suggested therein was not permissible in that there should be shown a more direct and closer relationship between the expenditures and the statutory purposes.

We are now advised that the Board of County Commissioners proposes to arrange for the Albuquerque City Planning Department to perform the necessary planning and the recreation and road funds will be billed respectively for the work performed for its purposes. The county thereafter will pay each bill separately from the road fund and the juvenile recreational fund, assuring that the payments from such funds will be only for the planning necessary in carrying out the purposes enunciated in the statute. We can see no objection to this proposed method so long as careful accounting procedures are followed and strict accountability is enforced in making certain that the funds are spent for the designated purposes. We feel that this proposal is compatible both with the purposes of the statutes involved and with our prior opinions on these subjects.

We trust this will answer the inquiry made.

Thomas O. Olson

Assistant Attorney General