

Opinion No. 59-171

October 26, 1959

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

TO: Honorable Morris S. Dickinson State Representative Quay County Box 246
Tucumcari, New Mexico

{*264} This is in response to your recent inquiry asking for an opinion from our office in regard to the following question:

"Can the State Highway Commission of the State of New Mexico legally set aside highway funds to be spent at the discretion of the Legislative Finance Committee to pay for an investigation of the operations of the New Mexico Highway Department?"

We assume that your question is in regard to the recent action of a meeting of the State Board of Finance granting to the Legislative Finance Committee certain sums relative to the investigation of the New Mexico Highway Department. We have checked the minutes of such meeting and find that such minutes show a sum of \$ 5,000 authorized to be spent by the Committee for such an investigation; and further, find that none of this sum is to come from funds appropriated to the State Highway Commission. The State Highway Commission is to spend the sum of \$ 49,500 from appropriated funds in connection with the investigation but such sums are to be allocated for the cost of employing a private investigative firm to investigate the technical aspects of the Highway Department.

There is no question but what the Highway Commission has the authority to spend such sums for such an investigation. Further, sufficient sums are available to the Commission. We refer you to Article V, Section 14 A of the New Mexico Constitution. This Article and Section empowers the Highway Commission with the duty of determining all matters of policy relating to the design, construction, location and maintenance of state highways and public roads. It further charges the Commission subject to any regulation as may hereafter be provided by law, of all matters pertaining to the expenditure of highway funds. Further, Section 55-2-13, N.M.S.A. 1953 Comp. grants to the Commission, authority to conduct such investigations and experiments as in its judgment may tend to the benefit of highway construction in the state. It is our opinion that the above cited authorities clearly give to the Highway Commission the power to conduct an investigation such as the one to be conducted.

In regard to the present availability of funds for such an investigation, we refer you to Chapter 288, Section 7, Laws of 1959 at page 857, being the appropriations for the State Highway Commission for the 48th and 49th fiscal years. Line-item two of this appropriation is entitled "Other Operating Expense" and the amount appropriated for the 48th fiscal year is \$ 56,725,000. In our opinion, the \$ 49,500 to be spent by the Highway

Commission for the technical investigation without question can come from this line-item.

Philip R. Ashby

Assistant Attorney General