

Opinion No. 63-62

June 5, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: TO: Mr. John Hough, Clerk Board of County Commissioners Luna County Deming, New Mexico

QUESTION

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1. Should road maintenance contracted for by a county on a bid basis be included in "the total mileage of public roads maintained" by the county within the meaning of Section 64-11-12 B (2), N.M.S.A., 1953 Compilation, in computing the proportionate share of motor vehicle fees to be received by the county?

CONCLUSION

Yes. See analysis.

OPINION

{*133} ANALYSIS

Section 64-11-12, N.M.S.A., 1953 Compilation, provides in general for the disposition of fees collected under the provisions of the Uniform Motor Vehicle Administration, Certificate of Title, and Anti-Theft Act, as amended.

Section 64-11-12 B provides as follows:

"Thirty-seven and one - half percent (37 1/2%) thereof shall be paid to the county treasurers of the several counties in this state and distributed between the respective counties as follows. . .

(2) Fifty percent (50%) of said amount shall be distributed to each county **in the proportion which the total mileage of public roads maintained by each of the respective counties bears to the total of public roads maintained by all of the counties of the state. . .**" (Emphasis supplied)

In view of this section of the statute, the issue becomes one of determining whether public roads maintained by a county under contract with a private contractor come within the purview of "public roads maintained" for inclusion within the total mileage of public roads maintained by a county in computing the county's proportion of fees collected.

It is noted that the above quoted section does not delineate any specific manner of road maintenance by the county. Further, Section 55-3-1, N.M.S.A., 1953 Compilation is a broad grant of authority to the Board of County Commissioners "to establish and change as provided by law and to maintain" county roads. It becomes obvious from a reading of the statutory language quoted above that the term "maintenance" in Section 64-11-12 B(12)), supra, is not limited to any specific means, and that county roads maintained by any **authorized** means should be included within the "total mileage of public roads maintained" by the counties under Section 64-11-12 B (2).

It is the opinion of this office that private contracts for county road maintenance are "authorized" means of maintenance.

The compiler's note to Section ~~{*134}~~ 55-3-1, supra, states that this section as originally enacted contained additional provisions "which are deemed superseded." Included within these provisions was a specific grant of authority to the counties to let contracts for county road maintenance. This language was deleted from Section 55-3-1, supra, by the compiler who indicated his belief that this provision had been superseded by Section 55-3-14, New Mexico Statutes Annotated, 1953 Compilation.

Section 55-3-14, however, pertains only to contracts for road construction and merely requires that any work of **construction** costing five hundred dollars or more be contracted for. This provision is mandatory and pertains only to construction of county roads where the cost amounts to five hundred dollars or more. The contracting provisions of Section 55-3-1, supra, as originally enacted (Laws 1917, Chapter 38 Sec. 18) pertain not only to work of construction, but also of "improvement, repair and maintenance". Section 55-3-14, supra, merely sets a limit on the amount of construction work that can be done other than by contract. It has nothing to do with construction work under five hundred dollars, or with improvement, repair or maintenance. Section 55-3-14, supra, is entirely compatible with the contracting provisions of Section 55-3-1, supra, as originally enacted and merely supplements these provisions.

Further indications of the legislative intent in this case come from a reading of the 1929 compilation. This compilation was made subsequent to the enactment of Section 55-3-14, supra, in 1921 (Laws 1921, Chapter 135, Sec. 14). Section 64-319, 1929 Compilation, contains the provisions of Section 55-3-1, 1953 Compilation. Also included in this section is the paragraph authorizing contracts for "construction, improvement, repair and maintenance of county roads. . . ." Section 64-214, 1929 Compilation also contains the provisions of Section 55-3-14, supra. It is obvious that the legislature itself did not delete the language in Chapter 38, Section 18, Laws 1917 pertaining to contracts when it enacted Chapter 135, Sec. 14, Laws 1921. These two provisions are contained in the 1929 Compilation. Further, the compiler in 1929 did not believe these sections to be inconsistent since he allowed both to remain in the compilation.

That part of Laws 1917, Chapter 38, Sec. 18 (Sec. 64-319, 1929 Compilation) relating to contracts was first deleted by the compiler in the 1941 Compilation (Sec. 58-301, 1941 Compilation), and this deletion was followed in Sec. 55-3-1, supra. The deletion

was the act of the compiler and not the legislature. It was his belief that Chapter 135, Sec. 14, Laws 1921 superseded the contracting language of Chapter 38, Sec. 18, Laws 1917. We do not agree.

The conclusion reached by this office is that the part of Chapter 38, Section 18, Laws 1917 pertaining to contracting remains a part of the law of New Mexico and was not superseded by Chapter 135 Sec. 14, Laws 1921. Therefore, there is specific statutory authority for letting of private contracts by counties for county road maintenance.

The fact that other means are provided in the statutes for county road maintenance does not deprive them of the power to contract when such power has been specifically granted by the legislature.

{*135} It is the opinion of this office that counties can enter into private contracts for county road maintenance and that such maintenance is included in "the total mileage of public roads maintained" by the county.

By: James E. Snead

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