

Opinion No. 65-232

December 7, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Mr. Ladd B. Gordon, Director, Department of Game and Fish, State Capitol Building, Santa Fe, New Mexico

QUESTION

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The State Game Commission was authorized by the 1965 Legislature to issue bonds to raise funds "to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvement projects and other similar capital outlay projects" in the sum of \$ 1,000,000. The State Planning Office has done certain planning work on specific projects which have been undertaken by the State Game Commission and other development and acquisition projects presently in the planning stage. May the State Game Commission pay the State Planning Office a \$ 2700.00 fee for the work done by that office.

CONCLUSION

See analysis.

OPINION

{*379} ANALYSIS

The Game and Fish Bond Act, Laws of 1965, First Special Session, Chapter 18, in Section 2 provides:

"Section 2. Purpose of act. -- The purpose of the Game and Fish Bond Act is to provide for use of revenues derived from fees for hunting and fishing licenses to issue {*380} bonds to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvement projects and other similar capital outlay projects.

Likewise, in Section 3 we find this language:

"Section 3. Bonding authority. -- Whenever the state game commission, by vote of a majority of its full membership entered in its minutes, determines by resolution that it is necessary to raise funds to provide for fish hatcheries and rearing facilities, game and fish habitat acquisition, development and improvement projects or other similar capital

outlay projects, the commission may issue and sell bonds of the state of New Mexico as provided in the Game and Fish Bond Act, but not to exceed an aggregate of one million dollars \$ 1,000,000). The purposes stated by the commission and the amount of the bond issue shall be approved by the state board of finance before issuance of the bonds.

Section 6 governs the use of the proceeds from the sale of the bonds. This section provides in pertinent part:

"Section 6. Proceeds from sale of bonds. -- Proceeds from the sale of bonds issued under the Game and Fish Bond Act shall be deposited in a special fund in the state treasury and used solely for the purpose for which the bonds were authorized. The cost of preparing, advertising and selling the bonds, including, any necessary expense for financial and legal services, shall be paid out of the proceeds."

From the sections quoted above we can see that the bond proceeds may be spent only for the purposes for which the bonds were authorized and it is apparent that the only authorized purposes that could have been approved by the State Board of Finance were capital outlay projects. It must therefore follow that if the fee to the Planning Office is for work done on projects approved under the authority to bond then it is proper to pay the fee. It likewise must follow that if the planning work was done on projects not within the purposes for which the bonds were issued, then the fee cannot be paid.

Regarding the planning work done, we add that we can see no reason why such work would not fall within the same category as engineering and design work on a project. The nature of this work does not mean necessarily that it is a type of work that may not be paid for from the bond proceeds.