

Opinion No. 68-66

June 24, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Oliver E. Payne Chief Counsel, Legal Division State Highway Department P.O. Box 1149 Santa Fe, New Mexico

QUESTION

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Does the State Highway Commission presently have legislative authorization to make relocation payments (to other than utility companies)?

CONCLUSIONS

No.

OPINION

{*110} ANALYSIS

We assume from your question that you are speaking of the relocation of uncondemned improvements on condemned property. Your question has also eliminated utility companies.

We find no statutory authority that would authorize the State Highway Commission to make such relocation payments. In our opinion, an attempt without a specific statutory mandate to pay these relocation costs would run afoul of the constitutional prohibitions of Article IX, Section 14, New Mexico Constitution. See **State Highway Commission v. Southern Union Gas Company**, 65 N.M. 84, 332 P.2d 1007 (1958).

Consideration of relocation costs in determining damages does however, appear to have a proper place. In **Board of Trustees v. B. J. Service, Inc.**, 75 N.M. 459 at 461, 406 P.2d 171, our Supreme Court, after stating that this state is firmly committed to the "before and after" rule as a measure of damages made the following pertinent remarks:

"In the application of such rule, it is proper to consider the cost of improvements for restoration purposes and relocation costs as helpful aids in determining the difference in the before and after value of the property. However, such prospective expenditures are not, themselves, proper elements of damage. (citations omitted) [Where part of a tract of land has been taken the question is how much less is the tract as a whole worth with the piece taken out of it than it was worth before the taking? In determining the value of the property after the taking, the tribunal assessing the damages must take into

consideration every element which a purchaser willing but not obliged to buy would consider, and "separate items may be considered not as specific items of loss, but merely with respect to their effect upon the market value.' 4 Nichols on Eminent Domain, p. 552]."

In view of all the foregoing we have concluded that the answer to your question is "no".

By: Roy G. Hill

Deputy Attorney General