

## **Opinion No. 71-59**

April 23, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** L. A. Guenther Chief, Real Estate Division Albuquerque District, Corps of Engineers P. O. Box 1580 Albuquerque, N.M. 87103

### **QUESTIONS**

#### **FACTS**

The Federal Uniform Relocation Assistance and Real Property Policies Act of 1970 [Federal Relocation Assistance Act], Public Law 91-646, was approved January 2, 1971. This legislation provides a program of relocation payments, advisory assistance and assurance that comparable, decent, safe and sanitary housing will be available for persons, either owners or tenants, displaced from their homes, farms or businesses as a result of federal and federally assisted programs "designed for the benefit of the public as a whole." Public Law 91-646, Section 201.

New Mexico enacted similar legislation in the "Relocation Assistance Act," Sections 55-12-1 through 16, N.M.S.A., 1953 Comp. [Ch. 235, Laws of 1969]. However, under New Mexico law, only those persons who suffer disproportionate injuries as a result of a displacement due to highway construction programs are entitled to the recovery provided by the Act. Senate Bill 234 passed in the 1971 Session of the New Mexico Legislature revised the 1969 New Mexico Relocation Assistance Act so that it now substantially conforms to the Federal Act; however, the benefits still are available only to those persons injured as a result of acquisition of real property by the State Highway Department.

#### **QUESTIONS**

Although there is no specific New Mexico statutory authority, may the customary assurances of cooperation with the Federal Government by local sponsors be expanded to include a valid promise of compliance with the requirements of Public Law 91-646 to enable persons to receive benefits from the Uniform Relocation Assistance and Real Property Acquisition Policies Act for injuries resulting from federally funded flood control projects?

#### **CONCLUSION**

Yes.

### **OPINION**

## {\*83} ANALYSIS

The Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 prohibits approval of any grant to, or contract or agreement with a State agency, under which federal financial assistance will be available to pay all or part of the cost of any program or project, which will result in the displacement of any person unless certain assurances from the State agency are received. These assurances are that:

"(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 205 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 205 (c) (3)." Section 210.

Thus, without authority to participate in the Federal Uniform Relocation Act, the State is effectively unable to receive any federal funds for most programs or projects.

The 1971 Legislature did, as mentioned above, provide for New Mexico's participation in the Act where the project involves highways, but failed to provide specific statutory authority for participation in the Act where a project or program involves other subjects, such as flood control.

Obviously, the New Mexico Relocation Assistance Act is insufficient authorization for a State agency to participate in such program; therefore, further statutory authorization must be found, or enactment of new legislation will be necessary for the State to share in the many federal programs and projects related to flood control.

In our opinion, at least with respect to programs and projects related to flood control, sufficient authorization is present in New Mexico law to enable local sponsors to participate in this federal Act.

There are currently two areas of legislation in this State dealing with flood control. They are Sections 14-42-1, **et seq.**, N.M.S.A., 1953 Comp., providing municipalities with the authority to deal with flood control problems, and Sections 15-50-1, **et seq.**, N.M.S.A., 1953 Comp., providing similar authority for the counties.

A municipality or county may acquire by condemnation property necessary to carry out the purposes of the respective flood control Acts, Sections 14-42-3 and 15-50-5, **supra**. However, condemnation proceedings do not always fully compensate those injured by such projects. For that reason, the provisions of the Federal Relocation Act are extremely beneficial to the State and its citizens. As stated above, these provisions are

meant to assure fair and equitable treatment of persons displaced as a result of federal programs, in order that these persons will not suffer disproportionate injuries as a result of projects or programs designed for the benefit of the public as a whole. Thus, moving and related expenses, replacement housing costs, replacement housing for tenants ineligible for other payments but displaced from dwellings as a result of a project and relocation assistance advisory services are all provided by the Federal Act.

Under Section 14-42-5, **supra**, a municipality may cooperate with "any {\*84} agency of the United States in carrying out the objectives of Sections 14-42-1 through 14-42-5 . . . ." Further, Section 15-50-3, **supra**, while authorizing the county flood commissioners to carry out the duties of flood control also authorizes the commissioners "to do all other acts necessary to carry into effect the provisions of Sections 15-50-1 through 15-50-9 . . . ."

In our opinion, the language in these sections is sufficiently broad to enable a local sponsor (either municipal or county) to participate in the Federal Relocation Assistance Act and thereby assure the State and its citizens of receipt of the available funds to those injured as a result of public programs or projects.

It is conceivable that objection to State participation in the Federal Relocation Assistance Act may be raised on the basis of the New Mexico Constitution, Article IX, Section 14. This section provides that:

"Neither the state, nor any county, school district, or municipality, except as otherwise provided in this Constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; Provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

However, no net gain accrues to persons under the Act. The reimbursement merely restores the person to the position he held prior to the relocation of his dwelling, business or farm. **State v. Lavender**, 79 N.M. 220, 365 P.2d 652 (1961). Thus, it is our opinion that State participation in the Federal Relocation Assistance Act will not result in violation of this section of our State Constitution.

It should be noted that the current New Mexico Relocation Assistance Act relating to highway programs or projects is effective only so long as the federal government authorizes and appropriates money for the payment and services set forth in Section 211 of the Federal Act. Section 207 of the Federal Act states as follows:

"Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the program or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall

pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first \$ 25,000 of the cost of providing such payments and assistance."

Under this section all funding (up to \$ 25,000) for property acquisition or displacement occurring prior to July 1, 1972, will be paid by the Federal agency. Therefore, it appears that the State will need no new legislation at this time to cooperate with federal agencies in carrying out the provisions of the Federal Relocation Assistance Act. Sufficient authority is present in current State legislation relating to flood control to allow cooperation with federal agencies in carrying out provisions of the Federal Relocation Assistances Act.

By: Leila Andrews

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