

## Opinion No. 25-3800

February 24, 1925

**BY:** JOHN W. ARMSTRONG, Attorney General

**TO:** Requested by: Hon. R. C. Woods, State Representative, Santa Fe, New Mexico.

Legislature may not authorize payment of sub-contractors in excess of contract price.

### OPINION

Answering your inquiry, we submit the following:

It seems that an appropriation of \$ 15,000 was made the University for the purpose of building and installing a heating plant; that the University let the contract to build and install this plant for \$ 10,250; that the original contractor defaulted owing various laborers and material men; that the University paid said contract price in full conformity with its terms necessarily leaving certain claims unsatisfied; and that it is proposed by the Resolution, in question, to pay, on account of the claims mentioned therein and on account of labor and materials furnished the original contractor, the sum of \$ 2826.66 in addition to said contract price. The foregoing seems to be the only essential facts necessary in answering your query.

Sec. 27, Art. 4, St. Const., reads as follows:

"No law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made."

We presume the parties mentioned in the Resolution are "subcontractors" or stand in the same relation as "contractor" mentioned in the foregoing section of the Constitution. The Legislature may not authorize the payments mentioned in the resolution. If the Legislature may not authorize the extra compensation to the contractor and sub-contractors, the University Board of Regents certainly would not be authorized to make the payments mentioned.

The balance of the \$ 15,000 appropriation if not expended or contract made involving its expenditure by March 14, next, will revert to the State Treasury and be subject to re-appropriation by the Legislature. The \$ 3,133.45, the amount repaid the University by the American Surety Company, is a part of the appropriation and reverts to the State Treasury after the two-year period the same as any other portion of the balance. See last Par. Sec. 8, Chap. 153, S. L. 1923.

In view of the foregoing it is unnecessary to decide the question of whether or not the instrument submitted is a Resolution or a Bill, it being understood the matter undertaken could be accomplished, if at all, only by a bill.

The instance of which you speak is not new. There are practically identical cases daily coming from all over the State, mostly complaints coming from laborers and material men having trusted original contractors without adequate security. These cases are found principally in connection with State Highway building. Our attitude has been the same in each case, that no Legislative relief is possible.