

Opinion No. 34-712

January 13, 1934

BY: E. K. NEUMANN, Attorney General

TO: Mr. Robert L. Ormsbee, Chief Clerk, State Highway Department, Santa Fe, New Mexico.

{*105} Your letter of January the 11th encloses a number of claims filed by various individuals against the Driscoll Construction Company on N.R.H. 131-B, in Eddy County, New Mexico. These claims briefly are for wages alleged to be due and also claims covering damages to trucks owned by different claimants.

You desire to know first if you should recognize claims of this nature. We have no statutory provision covering the filing of claims in matters of this kind, neither do we have any statute which authorizes the Highway Commission to withhold any funds due contractors for the construction of Highway Projects. Both of these matters are entirely matters of contract and the authority to withhold payment until the contractor satisfies the Commission that all debts have been paid is found in Section 1, paragraph 1-2 and paragraph 1-7 on pages 14 and 15 of the specifications, which is a part of the contract. Claims which may be recognized by your Department under these provisions are set forth in said paragraph 1-2 and include wage claims. Nowhere in any part of the contract specifications or contract bond do we find any mention of claims covering damages, and your Department should not be concerned with such claims, this being a matter strictly between the contractor and the person claiming such damages.

We note that the contract price for this project is to be paid entirely of National Recovery Federal Funds and you desire to know if claims should be recognized in view of this fact. These funds are allotted to the states for specific purposes and, in our opinion, any claim falling within the scope of those set forth in paragraph 1-2 and paragraph 1-7 should be recognized by your Department, inasmuch as all of said claims are under your contract recognized as being essential and necessary to the performance and completion of the work.

We may say, in this connection, that we have not interested ourselves in any question which might relate to a garnishment proceeding. If such question should arise there is a strong probability that such funds would not be subject to garnishment upon the theory that public policy forbids and that government funds may not be diverted from the purpose for which they are appropriated. Also, that such funds strictly are government funds and that the state is an agency of the government for the performance of the specified work. However, this question can be considered when and if it does arise.

{*106} We herewith return all files submitted to us in this connection.

By: FRANK H. PATTON,

Asst. Attorney General