

## Opinion No. 34-743

April 5, 1934

**BY:** E. K. NEUMANN, Attorney General

**TO:** Hon. G. D. Macy, State Highway Engineer, Santa Fe, New Mexico. Attn.: R. W. Bennett, Office Engineer

{\*128} Your letter of April 3rd refers to the U. S. Public Works Project N.R. M. 152-C Right of Way, and the question is again presented as to the right of the State Highway Department to enter upon and use certain streets within the municipal limits of the towns of Old and New Las Vegas.

In Gallegos vs. Conroy, decided some few months back, there is found the following language in the opinion: "We do not hold that the State Highway Commission can ruthlessly disregard any municipal plan or program relative to a municipal design relating to its streets and alleys, \* \* \*."

However, after holding that the State Highway Department had the right without the consent of the municipality to build its highway through the municipality, the Court continued with this language: "A contrary construction would permit the State to build main trunk lines, the arteries through which flows the life blood of inter - city, inter - county and inter-state traffic, either to the limits of a town, then skip to the other end of the village and begin the work again, leaving the space through the village, and the mode of travel to be determined by the city concerned who may or may not improve its streets, and who may insist that the travel be over and upon a street where dangerous curves and railroad crossings are located, or the Highway Commission could adopt the other alternative and by-pass the community in order to have uniform connecting highways."

Our construction and interpretation of this language is that the State Highway Commission is vested with the power and authority to use the streets located within a municipality as a part of its highway system, and that the consent of the municipality is not necessary to the construction of the project.

The State Highway Commission has the power to acquire the necessary right of way from the abutting property owner either by condemnation proceedings or otherwise, and under the authority of Gallegos vs. Conroy, it is our belief that an injunction proceeding would not be sustained in the Supreme Court.

As to whether or not an injunction would be issued in the trial court, my statement, of course, of necessity could not be so emphatic. This would depend upon the showing made by the parties to the proceeding as to whether or not the trial judge would in the exercise of his discretion issue an injunction.

By: FRANK H. PATTON,

Asst. Attorney General