

Opinion No. 42-4085

May 9, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. C. R. Sebastian State Comptroller Santa Fe, New Mexico

{*194} In your letter of May 6, you submit to us a resolution adopted by the Sandoval County Board of Education wherein it was resolved to pay \$ 170 to a school bus operator by reason of an unforeseen emergency to repair his school bus. The Director of Transportation has approved such an expenditure and you now request our opinion as to whether or not the Director of Transportation has the discretionary power to permit the use of county funds for repairing privately owned equipment in case of an emergency.

It is my understanding that the emergency was occasioned by the school bus operator allowing his bus to freeze and burst, and that he would have lost his bus but for the assistance as herein proposed, and that the school children would have had no way of getting to and from school. In answering your question, I assume that the bus route was let by contract to the bus operator for the current year at a certain and definite figure.

I duly appreciate the circumstances and conditions surrounding this transaction, and I am certain that the State Transportation Director's action herein was motivated by the best of intentions. I have searched diligently for a provision in our statutes which could be pointed to sustain such action, but my endeavor has been in vain. The reason for the absence of any such legislation, however, becomes patent when we review the provisions of Article IV, Section 27 of the New Mexico Constitution, which reads in part as follows: to-wit:

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

In view of the foregoing constitutional provision, even if we were able to point to a statute which purported to allow such an expenditure, under such circumstances I am of the opinion that such statute would be unconstitutional. To grant or to allow the bus driver an additional \$ 170, as proposed in the instant case, would certainly be "extra compensation after contract made."

In view of the foregoing, I am of the opinion that neither the State Transportation Director nor the County Board of Education can make any such an expenditure, and I recommend that you disapprove the same.

Trusting that the foregoing {*195} sufficiently answers your inquiry, I remain

By HOWARD F. HOUK,

First Asst. Atty. General