

Opinion No. 44-4491

March 30, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. F. G. Healy, State Highway Engineer, Santa Fe, New Mexico. Attention: L. D. Wilson, Right of Way Engineer

We have your letter of March 28, 1944, wherein you request us to advise you concerning whether or not we consider the advancing of money by your department to the State Purchasing Agent and the paying to the State Purchasing Agent the portion of expense to be borne by the State Highway Department, would constitute a diversion as defined and prohibited under the terms of Section 12 of the Hayden-Cartwright Act Public No. 393 of the 73rd Congress.

The complete citation of this act is Title 23, Section 55, U.S.C.A. Upon the reading of this section it is noted that it does not actually prohibit the states from doing anything, but merely declares a policy which, if violated, may deprive a state of one-third of the amount to which that state may be entitled under any apportionment thereafter made for the fiscal year for which the apportionment is made. This statute specifically allows the payment of administrative expenses in connection with the improvement or maintenance of highways. The present arrangement of payments made to the State Purchasing Agent are a portion of the administrative expenses of the State Highway Department, under which it is made possible for the State Purchasing Agent to perform those functions of the Highway Department in connection with purchases.

It is, therefore my opinion that the above mentioned statute is in no way involved in connection with the present arrangement of your department with the State Purchasing Agent. This result is confirmed by the 1938 opinion of the Attorney General of the United States which involved the purpose of this section. See 39 Opinion Attorney General, 57.

Hoping that the above fully answers your question, I remain,

By HARRY L. BIGBEE,

Asst. Atty. General