

Opinion No. 45-4728

May 31, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. David W. Carmody District Attorney Santa Fe, New Mexico

{*78} I have your letter of May 23, 1945, wherein you request an opinion of this office in behalf of the County Board of Commissioners of Santa Fe County, concerning whether or not the county can participate with the City of Santa Fe in repairing and surfacing one of the outlying city streets, which leads into a former State highway. You further state that all the repairs are to be made within the limits of the City of Santa Fe.

An examination of our statutes shows that various statutes concerning this matter have been enacted at different times in different acts, and are not entirely well coordinated, making it extremely difficult to determine the question which you have raised. Therefore, it becomes necessary to consider all statutes which involve this question.

Section 58-101 of the 1941 Compilation provides:

"All roads and highways, except private roads, established in pursuance of any law of New Mexico, and roads dedicated to public use, that have not been vacated or abandoned, and such other roads as are recognized and maintained by the corporate authorities of any county in New Mexico, are hereby declared to be public highways.'

Section 58-102 of the 1941 Compilation provides:

"All public highways, **except** such as are owned and operated by private corporations, and highways within the corporate limits of any incorporated city or town, shall be maintained {*79} and kept in repair by the respective counties in which they are located."

Section 58-301 of the 1941 Compilation concerns the general powers of County Commissioners, and provides that they shall have general control and management of all highways in their respective counties, except those under the jurisdiction of the State Highway Commission. No reference is made to highways within any incorporated city or town, unless it should be held that the reference to highways within the counties included highways within the cities or towns, within the contemplation of this section.

Section 58-320 of the 1941 Compilation authorizes the County Commissioners to levy not to exceed five mills to be expended for roads under the direction of the State Highway Commission.

Section 58-321 of the 1941 Compilation provides that 30% of such levy collected on the taxable property within the corporate limits of any city shall, under certain circumstances, be remitted to the city.

Section 58-322 of the 1941 Compilation further provides that cities and towns must use such amounts for streets only.

Section 14-3301 of the 1941 Compilation provides:

"The city council shall have the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons within the city, and shall cause the same to be kept open and in repair and free from nuisances. All public bridges exceeding forty (40) feet in length, over any stream crossing a state or county highway shall be constructed and kept in repair by the county: Provided, that the city council may appropriate a sum not exceeding ten dollars (\$ 10.00) per lineal foot to aid in the construction of any county bridge within the limits of such city, or to aid in the construction of any bridge contiguous to said city on a highway leading to the same."

Section 14-3303 of the 1941 Compilation provides the manner for cities and towns to aid in the construction and repair of a highway leading thereto.

Section 15-3522 of the 1941 Compilation provides for the maintaining of streets in unincorporated county seats, and further specifically provides that the county shall not pay any of the expenses in making such improvements or changes.

It is further noted that in an opinion of the Attorney General at Page 65 of the 1933-34 Report it was held that the State Highway Department could improve or construct roads running through municipalities. However, the provisions of the statute relied upon were general sections relating to the power and duty of the Highway Commission to construct and maintain a complete system of highways in the state. These provisions are not applicable in connection with the powers of the County Commissioners.

It is noted that in the foregoing sections that there is no specific authority for the Board of County Commissioners to maintain or build highways within the corporate limits of any municipality. In this respect I particularly call your attention to Section 58-102, above quoted, which specifically excepts the maintenance of streets within the limits of any incorporated city or town. Other sections which provide an allocation of funds between the cities and county indicates an intention that the city streets were not to be maintained by the counties.

Section 14-3301 alone provides a particular instance in which it is specifically provided that the counties are to construct or maintain any portion of a street system within a city, and this provision pertains only to bridges. It is noted that while Section 14-3303 provides a method {*80} by which a city may legally improve roads outside the city limits, that there is no similar provision enabling a county to improve streets within a municipality other than in relation to bridges.

It is further provided, in Section 15-3522, that in unincorporated county seats that even though the County Commissioners have the same powers as the City Council of incorporated towns, that no expenses in making improvements or changes in streets may be paid by the counties.

In view of all of the above provisions, it is the opinion of this office that under our present statutes the Board of County Commissioners of Santa Fe County may not legally spend the sums for the improvement of streets within the city of Santa Fe, other than in connection with bridges, as above discussed.

By HARRY L. BIGBEE,

Asst. Atty. General