

Opinion No. 46-4913

June 25, 1946

BY: C. C. McCULLOH, Attorney General

TO: Mr. F. G. Healy State Highway Engineer Santa Fe, New Mexico

{*240} We are in receipt of your letter of June 22, 1946 wherein you request an opinion concerning the authority of the State Highway Commission to pay into court the costs for fencing right-of-way, (along with the balance to be paid by the county in full payment of damages {*241} and benefits appraised against the County for such right-of-way) where same is acquired by condemnation proceedings and is included as an item of damage by the Board of Commissioners appointed by the District Court in such proceedings.

Section 58-220 of the N.M.S.A., 1941 Compilation provides:

"The state highway commission is hereby authorized to enter into cooperative agreements with the respective counties in this state, with any adjoining state, or with any department or bureau of the United States government, for the construction or improvement of public highways within this state or within such counties, or such adjoining state, or for the division between this state and such county or counties, or such adjoining state, or such department or bureau of the United States government, of the expense of the construction or improvements of public highways within this state, or within such counties, or such adjoining state, or for the acquisition of rights of way therefor, or for materials for the construction or improvement thereof."

It is my opinion that the State Highway Commission can legally make such a payment from the State Road Fund, as by so doing it would merely be participating with the county in the cost of securing the right-of-way for public highway.

Trusting this answers your inquiry, I am

By ROBERT V. WOLLARD,

Asst. Atty. General