

**STATE HWY. COMM'N V. SOUTHERN UNION GAS CO., 1958-NMSC-125, 65 N.M.
98, 332 P.2d 1017 (S. Ct. 1958)**

**STATE HIGHWAY COMMISSION of New Mexico, and L. D. Wilson,
Chief Highway Engineer, Plaintiffs-Appellants,
vs.
SOUTHERN UNION GAS COMPANY, a Delaware Corporation,
Defendant-Appellee**

No. 6427

SUPREME COURT OF NEW MEXICO

1958-NMSC-125, 65 N.M. 98, 332 P.2d 1017

November 14, 1958

Appeal from District Court, Santa Fe County; David W. Carmody, District Judge.

Rehearing Denied December 30, 1958; Leave to File Second Motion for Rehearing
Denied February 3, 1959, Reported at 334 P.2d 1118.

COUNSEL

Fred M. Standley, Atty. Gen., Robert F. Pyatt, Asst. Atty. Gen., John T. Watson, Charles
C. Spann, Robert E. Fox, Sp. Asst. Attys. Gen., Moise, Sutin & Jones, Albuquerque, for
appellants.

Willis L. Lea, Jr., James R. Wetherbee, Dallas, Tex., Manuel A. Sanchez, Santa Fe,
Noble & Noble, Las Vegas, for appellee.

Nordhaus & Moses, Albuquerque, Hartley, Buzzard & Patton, Clovis, Frank L. Horan,
Malcolm W. deVesty, Paul F. Henderson, Jr., Thomas N. Keltner, Albuquerque, amici
curiae.

JUDGES

Shillinglaw, Justice. McGhee and Compton, JJ., and J. V. Gallegos, D.J., concur. Lujan,
C.J., not participating. Sadler, J., not participating because of illness.

AUTHOR: SHILLINGLAW

OPINION

{*98} {1} This is a declaratory judgment action brought by the State Highway Commission of New Mexico and its Chief Highway Engineer against the Southern Union Gas Company to determine the constitutionality of Chapter 237 of the Laws of 1957, 55-7-18, N.M.S.A.1953, and the obligation of the State Highway Commission, if any, to reimburse the defendant for the cost of relocating its utility lines required because of the widening and improving of a state highway.

{2} The plaintiffs have refused to reimburse the defendant, contending that such reimbursement would be repugnant to the Constitution of the State of New Mexico, payments violating:

{*99} 1) Article IX, 14 which prohibits a donation of state funds in aid of a private corporation;

2) Article IV, 32 which prohibits the release of an existing obligation;

3) Article IV, §§ 16 and 30 since the Act does not specify the sum appropriated and leaves the extent of the appropriation and the payment thereof to be determined by the Bureau of Public Roads; and

4) Article IV, 18 because the Act extends the provisions of the Federal-Aid Highway Act of 1956, 23 U.S.C.A. 151 et seq. by reference to its title only.

The cause was heard below before the Hon. David W. Carmody who found that the Act did not violate any of the constitutional provisions mentioned and from such adverse judgment the plaintiff Highway Commission has appealed to this court.

{3} In the case of State Highway Commission v. Southern Union Gas Company, 65 N.M. 84, 332 P.2d 1007, we held that subsections B and D of 1 of this Act were repugnant to Art. IX, 14 of the Constitution of New Mexico which prohibits a donation of state funds in aid of a private corporation. For the reasons more fully set out in that opinion, the judgment of the lower court is reversed and the cause is remanded with instructions to enter a judgment declaring that the appellant State Highway Commission is under no obligation to reimburse the Southern Union Gas Company for relocation of utility facilities as contemplated by Chapter 237 of the Laws of 1957.

{4} It Is So Ordered.