

Opinion No. 51-5435

September 28, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Honorable Robert D. Castner Auditor, State of New Mexico Santa Fe, New Mexico

{*140} This is in reply to your letter of June 5, 1951, in which you inquire relative to the authority of the State Highway Engineer to make a direct charge against your office or other State offices and agencies to pay for the cost of caring for the automobiles kept in the Motor Pool, now being operated by the State Highway Department.

On June 4, 1951, I advised you, State Land Commissioner Shepard, and Superintendent of Public Instruction, Mr. Wiley, in a memorandum that the State Highway Engineer had full power to set up this motor pool and to take over the custody of all state-owned automobiles and I advised that this authority came from § 68-1105, N.M.S.A., 1941.

The statute giving to the State Highway Engineer the authority and the duty of "the care, control, supervision and custody of all motor vehicles which are the property of the state" does not make any provision as to how this authority and duty shall be exercised nor does it provide for any appropriation or other means of obtaining the funds to carry out this duty. It must be presumed that it was the intention of the Legislature that this duty be carried on as are other duties of the State Highway Engineer and that funds therefor must be provided in the annual budget for the Highway Department. The Highway Department's annual appropriation is not included in the general appropriations act passed by the Legislature. Highway funds are received under continuing appropriations in the various acts which establish or earmark {*141} certain revenue sources for the state road fund. The employment of the state road fund by the Highway Department is controlled by the State Finance Board through its annual approval of the budget submitted to the Highway Department.

In my opinion the Highway Department's only proper source from which to obtain the necessary funds for the operation and maintenance of its state automobile pool would be to seek approval of a revised budget item covering that amount by the State Board of Finance and the Governor.

In my opinion the Highway Department and the State Highway Engineer in the absence of statute do not have the authority to levy or make any special charge against the departments and agencies of the state for the maintenance, care and custody of the automobiles belonging to such departments and agencies.