

Opinion No. 52-5500

February 21, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Edward M. Hartman State Comptroller Santa Fe, New Mexico

{*214} On February 20, 1952, you requested an opinion from this office with reference to a factual situation in Bernalillo County in which its Board of County Commissioners claims that it will have a surplus of funds in the County Road Fund which it desires to use for construction of the County Hospital. Your inquiry was directed to the proposition whether such surplus of funds could be legally used in the construction of the hospital through transfer of the funds.

Your attention is respectfully directed to pertinent language appearing in Section 58-301 N.M.S.A. concerning the establishment of the County Road Fund, reading as follows:

"Except as by law otherwise provided all funds that may be derived from taxation, issuance of bonds, gifts or bequests, or from any other source, for road or bridge purposes, in the respective counties, shall be covered into a fund hereby created, {*215} to be known as 'County Road Fund.'"

The transfer of any moneys from these funds is prohibited by law. The pertinent language concerning this appears in Section 58-310 N.M.S.A., which reads as follows:

"It shall be unlawful to transfer any moneys from the county road and bridge fund to any other county fund. The county treasurer shall be liable on his official bond for any such transfer of (or) transfers. (Laws 1921, Ch. 135, § 10, p. 296; C.S. 1929, § 64-210.)"

The diversion of such funds or the misuse thereof would make any public official responsible therefor upon his official bond and subject to removal from office. This is clear from the language of Sec. 58-315 N.M.S.A., which reads as follows:

"Any public official who shall divert or misuse any county road and bridge funds or who shall violate or fail to carry out any of the provisions of this act (§§ 58-302 -- 58-315), shall be liable on his official bond therefor, and shall be subject to removal from office on account thereof."

It follows, therefore, that no matter how laudable the purpose for which county road funds might be utilized by transfer, the employment of such funds for use other than county road and bridge purposes is absolutely prohibited by law.

The disposition of any surplus in the County Road Fund, other than as provided in Chapter 58-301, et seq., is a matter for the Legislature and it alone can authorize a different use than what is now permitted under the statute.

I trust this fully answers your inquiry.