

## Opinion No. 52-5555

June 27, 1952

**BY:** JOE L. MARTINEZ, Attorney General

**TO:** Mr. Robert D. Castner State Auditor Santa Fe, New Mexico

{\*267} Recently you requested an opinion from this office as to whether you should honor a purchase voucher whereby the State Highway Commission has entered into an agreement to purchase real estate from St. John's Methodist Church in Santa Fe. It is understood that the building to be purchased will be used as an office building for the Maintenance Division of the State Highway Department. You state that you "have been unable to establish the authority whereby this agency may provide office buildings for its own use."

It is my opinion that the State Highway Department has the necessary statutory power to purchase the building in question, to be used for offices of the Department's Maintenance Division. This power rests in the first paragraph of Section 58-209, N.M.S.A. which reads as follows:

"The Commission shall have charge of all matters pertaining to the expenditure of the State road fund in the construction, improvement and maintenance of public roads and bridges in the State and shall do all things necessary and expedient in the exercise of such supervision."

The essence of this language was adopted as a Constitutional amendment in 1949, in Art. 5, Section 14, which reads as follows:

"The State Highway Commission is empowered and charged with the duty of determining all matters of policy relating to State highways and public roads. It shall have general charge and supervision of all the highways and bridges which are constructed or maintained in whole or in part with State aid. It shall have complete charge of all matters pertaining to the expenditure of State funds for the construction, improvement and maintenance of public roads and bridges."

This office is mindful of the general rule to the effect that administrative boards, commission, and officers have no common law powers, and that their powers are limited by the statutes creating them to those conferred expressly or by necessary or fair implication. 42 Am. Jur. 316. It is my opinion that in this case the power to purchase a building for the purpose mentioned is clearly inferred from the statutory and constitutional language quoted above.

It is obviously within the power of the commission to spend State funds for the payment of materials and labor used in the maintenance of State roads. The Maintenance Division of the Department in Santa Fe plans the maintenance program, what road

materials and equipment shall be used, and how the maintenance personnel shall be placed and utilized. With this in mind, can it be said that the function of the Maintenance Division office in Santa Fe is less necessary to the maintenance of State roads and bridges than actual materials and labor forces in the field? It is obvious, in my opinion, that both the former and the latter perform necessary functions in the accomplishment of such maintenance, and that it cannot be said that one is more directly concerned with maintenance than the other.

In October 1946 this Office was asked to construe Section 58-209 in determining whether the Highway Commission could legally participate to the extent of 50% in the construction of a power line to the State Police Broadcasting station in Sandia Mountains. The Highway Department had stated that it wished to participate in this plan {268} so that the Santa Fe office could maintain contact with its personnel on isolated maintenance patrols. In holding that the Commission could expend money for this purpose, Attorney General Opinion No. 4957 stated:

"It would seem that a determination by the Commission that it was necessary and expedient to maintain contact with employees doing maintenance and other necessary work, would not be unreasonable, thus, expenditure of money for the installation of a radio station to expedite maintenance or other necessary work, would be an expenditure authorized by law."

Likewise, it has long been recognized, and practiced, that the Commission can purchase realty for the purpose of providing warehouses for equipment and material necessary in the construction, improvement, and maintenance of State roads. A similar power has been recognized in the Commission to provide district supervisory offices in the field. Similarly, it is my opinion that since the function of the Maintenance Division in Santa Fe is the maintenance of the State's roads and bridges, the Commission may reasonably determine what is necessary to accomplish the exercise of that function, and may expend road funds for that purpose.

A distinction must be made between money expended for the construction, improvement, and maintenance functions, as here, and the power given to the Commission to condemn and acquire land for highway purposes under Section 58-207, N.M.S.A. The latter power has been rather strictly construed and it has been held that the Commission has no authority to acquire, finance, construct and maintain highways which do not constitute a part of the State's system. *Springer Transfer Company v. City of Albuquerque*, 44 N.M. 407; *Dougherty v. Vidal*, 37 N.M. 256. It was also held in Attorney General's Opinion No. 4519, May 18, 1944, that the Commission did not have the power to acquire off-street parking facilities in municipalities since such land could not be considered a part of the State Highway system. Under the point being considered in the present opinion, neither could such off-street parking facilities be considered a function of the construction, improvement, or maintenance of State roads.

The point discussed directly above then, is clearly distinguishable from the problem which concerns us here, and it is my opinion that the purchase of the building in question is legally permissible for the purpose of State road maintenance.

It is quite apparent that the Highway Commission, because of these constitutional and statutory enactments, have certain powers which many other State agencies and departments do not possess. If there be a feeling in some quarters that such powers possessed by the Commission are too broad, the remedy for such ills, if ills they be, lies in future constitutional amendments and legislative enactments.

I hope that this opinion has answered your questions upon the subject.