

## Opinion No. 52-5619

December 8, 1952

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

**TO:** Mr. Stephen W. Bowen Assistant District Attorney Tucumcari, New Mexico

{\*331} Recently you requested an opinion from this office as to the status of funds presently held by the State Highway Department in which Quay County claims an interest.

It appears that as of the effective date of Chapter 70, Laws of 1951, Quay County was indebted to the Highway Department in the sum of \$ 16,000.00 for the acquisition of rights-of-way for highways. This indebtedness was created as a result of a cooperative agreement, executed by the Highway Department and Quay County, by means of which the former provided the sum of \$ 16,000.00 to Quay County for the acquisition of rights-of-way for project F1 127 (12). These cooperative agreements are normal and usual and repayment is generally made by the counties out of the proceeds of Motor Vehicle License Distribution.

Upon the execution of these agreements, debtor-creditor relationships occur and this was the situation prevailing on July 1, 1951, the date Chapter 70, Laws of 1951, became effective. As a result the sum of \$ 16,000.00 was paid to the Highway Department to discharge this indebtedness. Subsequently, through favorable court action and settlement, Quay County obtained the rights-of-way for approximately \$ 9,000.00 and it now asks to accomplish the transfer of \$ 6,000.00 of the balance of the unused loan from the Highway Department to the Quay County road fund.

It is to be noted that upon the execution of the cooperative agreement, Quay County became indebted to the Highway Department in the amount of \$ 16,000.00. While no bank deposits may have been made in connection with the transaction, I believe that it is fair to say that with the creation of the legal obligation of Quay County to repay this money, the Highway Department became, in effect, the trustee of Quay County for that amount of money. While ordinarily that money would have been repaid to the Highway Department out of Motor Vehicle License funds due Quay County, the debt was extinguished by payment out of the "Special County Road Fund," provided for in Chapter 70, Laws of 1951. Upon the discharge of the indebtedness there was no further debt due the Highway Department from Quay County.

At that time the Highway Department was repaid the sum of \$ 16,000.00. It would appear that Quay County, in effect, a beneficiary under a kind of trust relationship, arising out of the original transaction, was entitled to the \$ 16,000.00. This follows for the reason that Quay County became indebted to the Highway Department in that amount in the first instance by agreeing to become indebted to the Highway Department

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By means of the Legislative Appropriation that debt was discharged and the fact that the debt was paid by the Legislative Appropriation, rather than out of Motor Vehicle Funds, does not alter {332} the conclusion that the debt was repaid, leaving the Highway Department, in effect, holding the subject matter of the discharged indebtedness as a trustee for Quay County.

If Quay County had been compelled to spend the entire \$ 16,000.00 to acquire rights-of-way, no question would arise. Having acquired the rights-of-way for less than the \$ 16,000.00 the question arises whether the unused part of the loan should revert to the balance remaining from the \$ 1,000,000.00 in the Special County Road Fund to be distributed as provided for in Chapter 70, Laws of 1951, or whether it should go to Quay County for its road fund.

It appears to be clear that there is no balance created in connection with this loan in favor of any balance to be distributed to the counties otherwise entitled to share in the balance. Quay County was indebted in the sum of \$ 16,000.00. That amount was repaid out of the Legislative Appropriation to the Highway Department. Hence there is nothing to revert to any balance.

It is my opinion therefore that when the Highway Department was paid the sum of \$ 16,000.00 to discharge the indebtedness due it from Quay County, Quay County was entitled to receive from the Highway Department for its road fund the sum of \$ 16,000.00, forming the subject matter of the indebtedness. Being entitled to \$ 16,000.00, it seems to follow that Quay County is entitled to the difference between what it paid for the acquisition of highway rights-of-way and the amount of the discharge indebtedness. Consequently, in my opinion, it is proper for Quay County to request the Highway Department to transfer to it the sum of \$ 6,000.00, not otherwise disbursed from the subject matter of the loan, for its road fund.

I trust this gives you the information desired.