

Opinion No. 55-6325

November 21, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. S. E. Reynolds, State Engineer, P. O. Box 1079, Santa Fe, New Mexico

We have your amended request for an opinion, dated November 15, 1955, amending your request dated September 17, 1955, in which you request an opinion on the following question:

Can hydrographic survey funds be used to pay for attorney's fees incident to and part of the hydrographic survey?

The statute setting forth the uses of the hydrographic survey fund is found in § 75-4-10, N.M.S.A., 1953, and reads as follows:

"The hydrographic survey fund shall be used for the payment of the expenses of the surveys provided for in section 151-122 (75-4-6), and all claims for services rendered, expenses incurred, or materials or supplies furnished under direction of the state engineer in the prosecution of said work shall be approved by the state engineer and properly vouchered and filed in the office of the state auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrants against the hydrographic survey fund on the state treasurer in payment thereof."

This statute referred to § 75-4-6, N.M.S.A., 1953, and the important part for this opinion reads as follows:

". . . When any suit has been filed the court shall, by its order duly entered, direct the state engineer **to make or furnish a complete hydrographic survey of** such stream system as hereinbefore provided in this article, in order to obtain all data necessary to the determination of the rights involved" (Emphasis supplied)

It is to be noted that § 75-4-10 allows for the payment of all expenses incurred in making the survey called for in § 75-4-6. Section 75-4-6 provides that the survey may be ordered by the court, or it may be furnished to the court by the State Engineer, and this would indicate that the Legislature expected the State Engineer to have already made some of the surveys under the provisions of § 75-4-2. It follows from this that the Legislature must have meant that the fund provided for in § 75-4-10 was to be used for the payment of all necessary expenses of a hydrographic survey. The necessary legal expenses in connection with the survey itself should be paid under the provisions of § 75-4-10.

Strength is added to this conclusion when you find that there is a provision for making the costs of the survey a charge against the land receiving the water rights in the adjudication. See §§ 75-4-6 and 75-4-9, N.M.S.A., 1953. It seems clear that the Legislature intended to create in the hydrographic survey fund a means by which the State Engineer could pay for the surveys which the statutes of New Mexico require his office to make.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General