

## Opinion No. 56-6463

June 12, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. L. D. Wilson, Chief Highway Engineer, State Highway Department, Santa Fe, New Mexico

You have asked our opinion as to the propriety of now transferring from a special account to the road fund certain balances held by the Highway Department under the first paragraph of Section 2, Chapter 70, Laws of 1951. There is no requirement in the law that these sums be held in a special account, so there could be no reason for not approving your discontinuance of the fund.

The law (Chapter 70) by extinguishing the county indebtedness in effect required the Highway Department to pay for the acquisition of rights-of-way, to the extent of its commitment to the county under its particular cooperative agreement, and this requirement would still have to be met. In view of your assurance that all rights-of-way under the projects involved have been acquired and paid for, and since the statute of limitations has probably run against any claims which might now be presented, we see no reason for further earmarking any funds for this purpose.

Although it may have been the intent of the Legislature that the distribution to the counties was to be made upon the basis of the commitment for the loan under the various cooperative agreements, rather than upon the actual indebtedness, and certainly this was the construction placed upon the law by the State Treasurer, there actually was no indebtedness under such agreements in excess of the amounts actually borrowed. So that in this respect Opinion No. 5619 dated December 6, 1952, rendered by my predecessor in office, Joe L. Martinez, is incorrect. The payment to the counties falling within the class designated by the first paragraph of Section 2, Chapter 70, of any excess over and above the amounts required for acquisition of rights-of-way under the particular cooperative agreement, was not within the intent of the law, and would be unfair to those counties falling within the second paragraph.

It is therefore our present opinion that this excess should revert to the road fund where it may be put to road purposes generally without regard to any particular county.