

**Opinion No. 56-6535**

October 29, 1956

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

**TO:** Mr. D. M. Smith, Jr., State Comptroller, State Capitol Building, Santa Fe, New Mexico

We have your letter of September 6, 1956, in which you request an opinion from this office upon the following question:

Does the Bateman Act prevent payment by the Town of Gallup of engineering fees under the following outlined fact situation?

A. In February, 1954, Gallup entered into a contract for engineering services in connection with the proposed paving project.

B. Payment was to be made for a property description and ownership list at the rate of one-fourth of one percent of the final cost. This payment was to be made even if the project was not completed. In case of an abandonment of the project payment of this sum was to be made within thirty days after the date of abandonment. This cost was \$ 1250.00.

C. There was to be made a charge of \$ 1500.00 for a preliminary report which would have been included in the engineering fees of the project had the project been completed.

D. The contract provided in case of abandonment of the project all that was due would be the fees of \$ 1500.00 for a preliminary report and \$ 1250.00 for the property description and ownership list. There was no provision concerning the time of payment of the \$ 1500.00.

E. The Town of Gallup received both the preliminary report and the property's description list and the ownership list, and there is no dispute but what fair price for such reports would be \$ 2750.00.

F. Formal abandonment was made of the project on September 4, 1956. The so-called Bateman Act is found in Section 11-6-6, N.M.S.A., 1953 Compilation, which reads as follows:

"After March 12, 1897, it shall be unlawful for any board of county commissioners, city, council, town trustees, board of education, board of trustees, or board of school directors of any school district, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any and all kind of indebtedness for

any current year which is not paid and cannot be paid, as above provided for is hereby declared to be null and void, and any officer of any county, city, town, school district or board of education, who shall issue any certificate or other form of approval of indebtedness separate from the account filed in the first place or who shall, at any time, use the fund belonging to any current year for any other purpose than paying the current expenses of that year, or who shall violate any of the provisions of this section, shall be deemed guilty of a misdemeanor and upon a conviction thereof shall be fined not less than one hundred (\$ 100) nor more than one thousand dollars (\$ 1,000) or be confined in the county jail for a period of not more than six (6) months or by both such fine and imprisonment, in the discretion of the court trying the case."

In view of the Bateman Act the crucial question then becomes, when did the Town of Gallup become obligated to make this payment for the engineering services that were rendered. At the time the contract was made, namely, 1954, it was contemplated that these services would be paid as part of the costs of the paving project and would be paid out of assessments made against the property benefited by such project. It is clear that from the letter accompanying your request that the Town of Gallup became obligated to pay for such costs from its general fund only, and at such time as when this project may have been abandoned. Until such time as the Town of Gallup abandoned the paving project there was no obligation on the part of the town to make payment for these services. We therefore conclude that since formal abandonment of the project was made in September of 1956, the Town of Gallup could make payment out of current funds for these services and this would not be in violation of the Bateman Act. It was this act of abandonment which created the obligation to make the payment from the general fund according to the terms of the original contract.

Trusting we have answered your questions, we remain

By: Paul L. Billhymer

Assistant Attorney General