

**Opinion No. 57-238**

September 24, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Mr. Ernest W. Bain, Chief, Local Government Division, Department of Finance and Administration, P. O. Box 1359, Santa Fe, New Mexico

**QUESTION**

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The New Mexico Division of Courtesy and Information has a Port of Entry building in Clayton, New Mexico, in which municipality there is a paving program currently in progress. The paving program includes the street in front of the Port of Entry building. The division of Courtesy and Information owns the building and lot. May the Division legally be assessed for the paving, and may they legally pay for it?

CONCLUSION

No.

**OPINION**

ANALYSIS

At first glance it might be thought that Section 14-41-6, N.M.S.A., 1953 Compilation, which is as follows:

"When in the opinion of the governing body of any city, town or village, it shall be deemed, advisable to construct or repair any sidewalks, paving, grading, sewer, gutter or other improvements in, upon, adjoining, under or above any street, alley, or other public way, for the cost of which, land owned by such municipalities, the United States of America, the state of New Mexico, or any county thereof, may be assessed, the governing body of such municipality shall provide for the cost of such repairs or improvements chargeable against such public property by causing to be levied upon the taxable property within such municipality a continuing special tax sufficient to meet all matured and maturing installments, including interest and penalty, as they fall due, which shall not exceed one (1) mill on the dollar for any one (1) year, and proceeds of such tax to go into a special fund to be applicable only to the payment of the cost of such repairs or construction. Provided, that the surplus, if any, derived from said one mill levy not required for the purposes herein before in this section provided, may be expended by the governing body of such municipalities in general repairs to sidewalks, paving, grading, sewer, gutter or other improvements throughout such municipalities."

would authorize the assessment and its payment by the State of New Mexico in the above instance. However, we do not think so, for reasons hereinafter given.

This section above quoted was originally enacted as Laws 1921, Chapter 85, the title to which is as follows:

"An Act authorizing cities, towns and villages to make a special tax levy upon all property located within said municipalities for the purpose of paying the cost of sidewalks, paving, grading, sewer, gutter, and other improvements in, upon, adjoining under or above any street, alley, or other public way abutting on lands owned by said municipalities; Creating a special fund therefor and providing a penalty for the diversion of said funds; and to repeal all inconsistent laws."

You will observe that the title recites that municipalities are authorized to make the special assessment upon all property located within their corporate limits. Such, of course, is a far cry from restricting the assessment to the publicly owned property in question. As was pointed out in *Oliver et al., vs. Board of Trustees of the Town of Alamogordo*, 35 N.M. 477, 1 P. 2d 116, the reason for the enactment of this legislation was that existing laws provided no authority for front footage assessment for public improvements abutting public property.

In short, then, we simply view Section 14-41-6, *supra*, as authorizing a special assessment against property generally, for the benefit of the public property.

We accordingly conclude that the State of New Mexico, meaning its Division of Courtesy and Information, cannot be assessed for the cost of the improvements in question, and that a payment of said assessment would be a misapplication of public funds.

However, we wish to add that the municipality would obtain some relief under the provisions of Section 64-11-12, N.M.S.A., 1953 Compilation, 1957 Pocket Supplement.