

Opinion No. 58-11

January 20, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
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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May the Curry County Board of Commissioners, in connection with paving the Court House grounds and sidewalks around the Court House:

- (1) Pay for paving the grounds with road fund moneys?
- (2) Pay for paving the sidewalks around the Court House with road fund moneys?

CONCLUSION

No.

OPINION

ANALYSIS

The "county road fund" is provided for by Sec. 55-3-1, NMSA, 1953. It consists of all funds available to the county "for road or bridge purposes". The Board of County Commissioners under the statute cited has the general control and management of all roads in the county with certain exceptions not material here. Statutory provisions following Sec. 55-3-1 make it clear that the moneys of the county road fund are to be expended for road purposes, and for road purposes only. Thus Sec. 55-3-11 provides in relevant part as follows:

"It shall be unlawful to transfer any monies from the county road and bridge fund to any other county fund. The county treasurer shall be liable on his official bond for any such transfer of [or] transfers."

Under Section 55-3-16, any public official diverting any county road and bridge funds is liable on his official bond therefor and shall be subject to removal from office. Violation of the statute is further made a misdemeanor by Sec. 55-3-15.

In our view, it requires no argument or authority to demonstrate that use of the road fund for the purposes set forth in the inquiry is a diversion of that fund from road purposes. This office has previously held such diversion of funds to be improper. See Opinion No. 5500, issued February 21, 1952, and Opinion No. 6110, issued February 18, 1955.

Your inquiry further involves consideration of the question whether the provisions of Chapter 250, Laws of 1957, creating a Local Government Division of the State Department of Finance and Administration and defining its powers and duties, may be viewed as permitting the use of the road fund for the purposes contemplated in your inquiry. In our opinion, this conclusion is unsound. Ch. 250, Laws of 1957, does not undertake expressly to amend or to repeal the statutory provisions relating to use of the road fund previously referred to. Amendment by implication would seem to be precluded by the provisions of Art. IV, Sec. 18, of the Constitution of New Mexico, and repeal by implication is never favored. See **State v. Valdez**, 59 N.M. 112, 279 P. 2d 868 (1955) and **Stokes v. New Mexico State Board of Education**, 55 N.M. 213, 230 P. 2d 243 (1951).

In any event, the provisions of Ch. 250 are completely consistent with the continued existence and vitality of the road fund statute and indicate the intention not to affect its provisions. Thus, Sec. 2(G) empowers the local government division to:

"Upon the approval of the director of the department of finance and administration, authorize the transfer of funds from one budget item to another when such transfer is requested and an emergency condition exists meriting such transfer **and such transfer is not prohibited by law.**" (Emphasis added)

Accordingly, it is our conclusion that the county road funds cannot be used for the purposes indicated in your question.