

Opinion No. 61-90

September 22, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mr. W. A. Williams, Jr., Chairman, State Soil Conservation Committee, Rt. 4, Box 36, Santa Fe, New Mexico

QUESTION

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May the \$ 20,000.00 appropriated to the State Soil Conservation Committee by Chapter 91, Laws 1949, be used not only to purchase equipment but also to pay freight charges and inspection fees on such equipment?

CONCLUSION

Yes.

OPINION

ANALYSIS

It is necessary to point out initially that the \$ 20,000.00 appropriated to the Soil Conservation Committee by Chapter 91, Laws of 1949, for the specific purpose of purchasing equipment was enacted as a separate statute quite apart from the General Appropriation Act. Thus we have no problem of reversion of funds. Actually this money was never withdrawn from the general fund but the Soil Conservation Committee has through the years obligated all or part of this money.

The Soil Conservation Committee now has an opportunity to acquire heavy equipment from the Federal Government either free or at a nominal cost. However, this opportunity cannot be seized unless it is permissible to pay freight charges and inspection fees on such equipment from this sum.

When originally appropriated, the statute provided that the money was to be used "for carrying out the purposes of this act, namely: the purchasing of equipment for Soil Conservation districts, whose credit requires the guaranty of the State Soil Conservation Committee." Chapter 91, Laws of 1949, Section 45-5-5, N.M.S.A., 1953 Compilation, compiler's note.

In 1959 the Legislature enacted Section 45-5-5.1, N.M.S.A., 1953 Compilation (P.S.), authorizing the State Soil Conservation Committee to "acquire equipment suitable for

soil conservation work, and material and supplies suitable for construction when the material and equipment can be acquired for nominal sums **plus transportation.**" (Emphasis added).

Reading these two Sections together, we are of the opinion that money from this \$ 20,000.00 appropriation may be used to pay transportation charges on this equipment which is to be acquired either free of charge or for a nominal sum.

Prior to having such equipment shipped and thus becoming obligated for transportation costs, the Soil Conservation Committee prefers to pay an inspection fee in order to ascertain whether the equipment is in a suitable condition. In such cases an inspection fee is an inherent part of the procedure for obtaining this surplus Federal equipment, and consequently reasonable inspection fees may also be paid out of this \$ 20,000.00 appropriation.