

Opinion No. 33-625

July 10, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mr. G. D. Macy, State Highway Engineer, Santa Fe, New Mexico.

{*65} Your letter of July 7th, 1933, to which is attached the letter from the Bureau of Public Roads, requests the opinion of this office as to the {*66} legal authority of the State Highway Department to construct and maintain (1) extensions of the Federal Aid System into and through municipalities and (2) secondary or feeder roads.

Part of Section 64-212, 1929 Code provides:

"* * * All roads, and bridges upon roads, that have been declared to be a state highway by acts of the legislature or resolutions of the State Highway Commission shall be maintained at the expense of the state. * * *"

Section 64-308, 1929 Code, relating to duties of the State Highway Engineer, is in part, as follows:

"* * * He shall cause to be made and kept in his office a general highway plan to the state; * * * and shall, under the direction of the state highway commission, select and designate the highways that should comprise a system of state roads, which shall, as nearly as practicable, be such as will best serve the traffic needs, and develop the resources of the state. Upon its adoption by the state highway commission, the system of the state roads so designated shall be improved as soon thereafter as practicable, under the provisions of this act and such other provisions as the legislature may enact therefor. The system of state roads so designated may be changed or added to, from time to time, by the state highway engineer, subject to the approval of the state highway commission. * * * He shall determine the character of, and have supervision over the construction, repair and maintenance of all state roads and bridges improved under the provisions of this act * * *."

Section 64-309, 1929 Code, relates to improvement of county main roads for which counties ask such state aid, with this proviso, however:

"* * * Provided that whenever, in the judgment of the State Highway Commission, it is desirable to proceed with the improvement of any road or roads comprised in the system of state roads, * * * it shall be lawful for the state highway engineer to proceed with the improvement of any such road or roads without application of the County Commissioners, and to pay the entire cost of such improvement from the portion of the state "road fund" made available under the provisions of this act for expenditure wholly within the discretion of the state highway commission * * *."

Section 64-326, 1929 Code, in part, is as follows:

"The Commission shall have charge of all matters pertaining to the expenditure of the state road fund in the construction, improvement and maintenance of public roads and bridges in the state and shall do all things necessary and expedient in the exercise of such supervision * *."

Section 64-326, 1929 Code is:

"The Commission shall, when requested, advise towns, villages and counties with regard to the construction and maintenance of any road or bridge, shall select, lay out and construct a system of prospective highways."

Section 64-331, 1929 Code:

"It shall be the duty of such Commission to construct, repair and maintain, at the expense of the state, either wholly or in part, such public roads and highways, within the state, as in their judgment will best subserve the interest of the general public, looking to the construction and maintenance of a complete system of highways in the state."

Section 64-901, 1929 Code, is as follows:

"The word 'state highway' as used in this act shall include any highway declared to be a state highway by an act of the legislature, or designated by such by the state highway engineer." (This act applies to title to state highway providing for title in state.)

It is apparent from the above that our highway laws were constructed piece meal, but are fairly well coordinated. It is my opinion that the State Highway Department has full authority in both instances mentioned {67} in your letter.

In cases of roads through municipalities all doubt can be removed by co-operation with municipal officials.