

## Opinion No. 33-677

October 31, 1933

**BY:** E. K. NEUMANN, Attorney General

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

{\*88} Referring to your letter of October 27th, 1933, wherein you ask the following questions:

1. Whether or not a material pit, which is not adjacent to the actual right of way of a proposed State Highway is such a necessary adjunct to the highway construction that it may also be considered a part of the highway right of way in making a conveyance of State Lands as highway rights of way.

2. Where the State Land is {\*89} under a purchase contract to a third party, can the State here obtain right of way for highway purposes as set forth in the above mentioned opinion, without first having obtained a release or waiver from the holder of such purchase contract. Of course, it is to be considered that the State Land Office will accredit the holder of such purchase contract for the amount of land to be actually used for said highway right of way.

You refer to the letter of Honorable Harry S. Bowman, former Attorney General, said letter being his Opinion No. 3454.

We have heretofore agreed in the conclusion of Mr. Bowman, who was also sustained by Mr. Dow when he was Attorney General, and the conclusion therein reached can be extended so as to give you an affirmative answer to question No. 1.

As to question No. 2, any arrangement that can be worked out with the contract purchaser may be valid. In other words, the Land Commissioner may be guided by the opinion heretofore mentioned, but the purchaser must in some manner be satisfied so as to effectively remove his claims and rights under his contract.

A careful examination of the usual contract of purchase of state lands, used by the Land Office, excludes only "valid **existing** rights, easements, rights of way and reservation."