

## Opinion No. 34-804

September 5, 1934

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

**TO:** State Highway Commission, Santa Fe, New Mexico.

{\*152} The transcript of proceedings with reference to the issuance of \$ 625,000.00 worth of State Highway Debentures issued pursuant to the authority under Chapter 30, Laws of 1933 has been carefully examined by me.

It is my opinion that said debentures and the proceedings taken precedent to their issuance are in all things legal and that said debentures are and will be valid and legal obligations of the State of New Mexico, payable from the funds made available for such purposes.

Only one question with reference to the issue of said debentures might arise and that is in connection with the suit that was filed on August 31, 1934 in the District Court of Santa Fe County, New Mexico, entitled Arthur W. Cameron, plaintiff vs. State Board of Finance of the State of New Mexico, et al, defendants, being numbered 15729 on the civil docket of said court. This action, however, was dismissed upon order of the district court on September 3, 1934, although plaintiff was granted an appeal to the Supreme Court of the State of New Mexico. The court in dismissing said cause, or in a statement made prior to such dismissal, held that the plaintiff had no capacity to sue, was entitled to no equitable relief and that there were no legal grounds upon which such suit could be maintained.

While it is true the appeal was granted, said appeal had not been perfected prior to September 4, 1934, on which date said debentures were sold, and, consequently, the status of the case cannot be changed upon appeal. This statement is founded upon the fact, as shown by the pleadings in said cause, that all plaintiff was seeking to obtain was an injunction against the State Board of Finance against selling said debentures. The validity of the debentures was in no way attacked nor was any allegation made that questioned the validity of the debentures if and when issued and sold. Consequently, in my opinion, the case would be moot at such time that the appeal might be perfected.