

Opinion No. 38-1977

June 22, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. Hugh G. Calkins Regional Conservator Soil Conservation Service Albuquerque, New Mexico

{*243} This is in response to your letter of June 13, 1938. You state that you have an erosion control project along the Gila River in Arizona and New Mexico, involving the improvement of the channel of the river with the object of reducing erosion. As I understand your inquiry, it is directed, first, as to whether or not the State or the owners of the land have title to the river bed, and, second, if the owners of the land have title to the river bed, what type of easement should be taken from them and what agency of the State of New Mexico should take the same, looking to a cooperative agreement with the Soil Conservation Service relative to conducting your project.

In Opinion No. 1902 to Mr. G. F. Conroy, State Highway Engineer, we expressed the opinion that title to river beds in the State of New Mexico was vested in the riparian owners. At least, we thought the question was close enough to require an easement by the State Highway Department before removing sand and gravel from a river bed.

{*244} While we are not familiar with the type of easement you desire the State or its agency to take, it is our opinion that under the provisions of Section 8 (4) and (5) of Chapter 219, Laws of 1937, any soil conservation district located within the bounds of the proposed project could take any type of easement and enter into a cooperative agreement with you. However, before any steps are taken to effect such a plan, I would suggest that you submit further data and that you take the matter up with the United States District Attorney of this District.

By: RICHARD E. MANSON,

Asst. Atty. Gen.