

**Opinion No. 39-3131**

May 12, 1939

**BY:** A. M. FERNANDEZ, Asst. Atty. Gen

**TO:** Mr. C. R. Sebastian, Acting State Comptroller, Santa Fe, New Mexico.

{\*47} We have your letter of May 11, enclosing letter from Mr. McIntosh, city attorney.

It appears from Mr. McIntosh's letter that after payment of all paving assessments against the city there is a surplus of approximately \$ 5,000.00 from a one-mill levy made under the provisions of Section 90-1401, 1929 Compilation. It also appears that foreclosure suits have been brought against individual property owners to foreclose paving assessments, and that it will be necessary to use approximately \$ 1,000.00 for advertising costs in the sale of property so foreclosed, for which no provision was made and for which there are no funds.

Inquiry is made whether or not the surplus above referred to may be used in part to advance the necessary fees for publication, the money so used to be repaid from proceeds of such sales of property when made.

The statute above referred to provides that such surplus may be expended by the {\*48} city in general repairs to sidewalks, paving, grading, sewer, gutter or other improvements throughout such municipalities. In this state all levies are generally made for a specific purpose because of the effect of the Bateman Act, but nevertheless the State Comptroller is given the authority, upon the written request of the State Tax Commission and the approval of the Attorney General, to authorize the transfer of funds from one budget item to another when requested by the city, Section 134,513, 1929 Compilation, and it is my opinion that this authority extends to funds in such surplus.