

Opinion No. 44-4519

May 18, 1944

BY: EDWARD P. CHASE, Attorney General

TO: Mr. F. G. Healy, State Highway Engineer, Santa Fe, New Mexico. Attention of L. D. Wilson, Right of Way Engineer

In your letter dated May 13, 1944, you state that the Public Roads Administration requests information relative to the State's legal authority in connection with securing rights-of-way for various types of highway projects within cities and incorporated municipalities for use in a proposed highway program, as follows:

"Does the State have legal authority to (a) finance, (b) acquire lands in its own name, (c) construct, (d) maintain, and (e) operate (applicable to No. 4 only) such facilities:

"1. Urban extension of the Federal Aid System.

"2. Urban extension of the State System.

"3. Urban highways other than urban extensions of the Federal Aid State Systems.

"4. Off-street parking facilities in cities."

There seems to be ample authority to acquire, construct, finance, maintain and operate urban extensions of federal aid state highway systems and urban extensions of state systems not receiving federal aid.

Section 58-207, subsection (e) of the 1941 Compilation authorizes the State Highway Commission, in the name of the State, to condemn rights-of-way for public highways and to pay damages in connection therewith out of the state road fund.

Section 58-208 of the 1941 Compilation gives the Highway Commission general charge and supervision of all highways and bridges in the state which are constructed or maintained in whole or in part by the aid of state moneys.

Section 58-211 of the 1941 Compilation also makes it the duty of the Commission to construct, repair and maintain public roads and highways as in their judgment will best subserve the interests of the general public.

Section 58-218 of the 1941 Compilation enlarges the general powers and duties of the Commission over that contained in Section 211 above mentioned.

Section 58-225 of the 1941 Compilation authorizes the Highway Commission to enter into contracts and agreements with the federal government to participate in the federal aid projects.

Section 58-229 of the 1941 Compilation gives the State Highway Commission full control over all roads designated by the Commission as state highways or created as state highways by acts of the Legislature. and provides for the payment of the cost of maintenance thereof.

The authority to acquire lands, construct and maintain state highways is thus broad enough so that the Commission would have such authority, even within the limits of municipalities. *Gallegos v. Conroy*, 38 N.M. 154, 29 P. (2d) 334. However, it is noted in all these statutes that the Highway Commission only has authority relative to the extension and construction, et cetera, of state roads and highways; therefore, it has not authority to acquire, finance, construct, maintain and operate urban highways or systems which do not constitute a part of the state system, with or without federal aid; neither would the Commission have authority to acquire, finance, construct, maintain and operate offstreet parking facilities in municipalities, since the same cannot be considered a part of the state highway system. In this connection see *Springer Transfer Company v. City of Albuquerque*, 44 N.M. 407, 103 P. (2d) 129; *Dougherty v. Vidal*, 37 N.M. 256, 21 P. (2d) 90; *Summerford v. Board*, 35 N.M. 374, 298 P. 410.

By C. C. McCULLOH,

First Asst. Atty. General