

**Opinion No. 46-4887**

April 4, 1946

**BY:** C. C. McCULLOH, Attorney General

**TO:** Richard F. Rowley Assistant District Attorney Ninth Judicial District Clovis, New Mexico

{\*216} Receipt is acknowledged of your letter dated April 2, 1946, in which you enclose a proposed cooperative agreement between the board of county commissioners of Curry County and the State Highway Commission, for the acquisition of right-of-way in connection with a proposed four-lane highway running west of Clovis. You are wondering whether the contract is in violation of the Bateman Act, since it provides for ten equal annual payments, commencing February 1, 1947.

Section 58-220 of the 1941 Compilation authorizes the Highway Commission to enter into cooperative agreements with counties to meet the expense of public highways for the acquisition of right-of-way and for materials.

{\*217} Section 58-221 provides the manner of payment of such agreements and in case of insufficient funds, authorizes the highway commission to advance money from the State Road fund, and in such cases the State Treasurer is authorized to reimburse the State Road fund from monies subsequently coming into his hands to the credit of the county from the motor vehicle license fees.

Section 58-222 specifically authorizes Boards of county commissioners to enter into such cooperative agreements with the State Highway Commission, and specifically provides that such contracts shall be exempt from the provisions of the Bateman Act, Section 7-607 of the 1941 Compilation.

In view of this statutory authority for such agreements, I believe the county commissioners can legally enter into such contracts with the State Highway Commission and that the same will not violate the Bateman Act. In this connection, it is noted that in Gallegos v. Conroy, 38 N.M. 154, the Supreme Court recognized the right of the county commissioners to enter into such contracts.