

April 8, 1937

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ARIZONA ATTORNEY GENERAL

Mr. T. S. O'Connell
State Highway Engineer
Phoenix, Arizona

Dear Mr. O'Connell:

In re: Expenditure of county funds together with matched federal funds for county highways

As we understand it the specific question asked us is whether there is any way in which a county can match such portions of the federal emergency funds as are required to be expended on county highways under contracts entered into by the State Highway Commission with the government, and how the counties may bind themselves to maintain such highways in the future.

As we understand it the question relates to purely "county" highways. It does not relate to secondary state highways provided by Section 1574a of the Code, nor to state routes which for some purposes are county highways but still classed as state routes.

So far as the county entering into agreements to maintain such highways in the future the Supreme Court of Arizona, in Board of Supervisors vs. Udall, 1 Pac. (2d), reading at page 348, expressly denies to supervisors the right to bind their county to maintain perpetually either a county highway or a state route. However, we understand that the Bureau of Public Roads is willing to waive such a contract and to avail itself of remedies which it has in case a board of supervisors does not maintain a highway after its construction.

We believe it is within the power of boards of supervisors to match federal funds for the purpose of constructing, altering or repairing county highways and to contract with the Highway Commission permitting it to perform the work under contracts with the Bureau of Public Roads.

However, before such can be done the item of expenditure and the amount of county funds to be used must either have been budgeted at the time the indebtedness is incurred or

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the contract entered into, or else there must be funds available in the county fund free from the restrictions of the budget law.

We know of no such funds available to the counties of the state.

Putting it in specific terms, the fund which is to be matched with federal funds must be in the present budget to be expended for the items of expenditure set up in the budget. It is not sufficient that an agreement shall be to pay the funds out of future budget items. This has been the specific ruling of the Supreme Court in two cases. *Bank of Lowell vs. Cox*, 279 Pac. 237, wherein the court says:

"The supervisors must first prepare an estimate of all expenses of every nature which must be met by the county during the ensuing year, and if any proposed expenditure is not shown in the budget, no liability for that purpose can even be incurred, for 'no debt, obligation, or liability shall be incurred or created in any year in excess of the amounts specified therein as an amount proposed and finally adopted for each purpose therein named'; Nor have they any jurisdiction to incur any indebtedness whatsoever except (a) as shown in the budget.

Again, in *Board of Supervisors vs. Udall*, 1 Pac. (2d) reading at pages 348, 349,

"It appears from the stipulation of facts that no money was provided in the annual budget of Apache county for the acquiring of the right of way mentioned in the complaint herein, or of any other highway, or for the construction or improvement of any new road or new highway. There can be no question that the expenditure by boards of supervisors for the construction and maintenance of highways is as much under the control of the so-called "Budget Law" as any other portion of county expenditures. Such being the case, no expenditures can

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be made, nor can any future indebtedness be incurred for any purpose not provided for in the budget, unless the funds to cover such indebtedness are already on hand."

It appears, therefore, that unless the counties have some means of raising funds by donation or otherwise, or unless there is some fund under the control of the boards of supervisors not derived from the general revenue laws, there is no power in the boards to expend any present moneys or to contract for the spending of such for this purpose. The only thing they can do is to provide in their coming budgets for funds for such specific purpose and then enter into contracts with the Commission for the expenditure of such funds.

The decisions of the Supreme Court and the failure of the legislature to provide remedial legislation have closed the door to any other proceeding.

Very truly yours,

JOE CONWAY
Attorney General

A. R. LYNCH
Assistant Attorney General