

Opinion No. 13-1050

May 24, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Hon. George E. Remley, District Attorney, Cimarron, N. M.

WHEN COUNTY COMMISSIONERS MAY EMPLOY ATTORNEY.

County Commissioners employ attorneys in certain cases where district attorney is unable to act.

OPINION

{*219} I trust you will excuse my delay in answering your letter of the 15th instant which is due to the fact that I have not been altogether clear in my own mind as to what I ought to say, and in addition have been compelled to absent myself from Santa Fe to go to El Paso on business connected with the state boundary suit.

You call attention to the frequent necessity that boards of county commissioners have for advice at times when neither you nor your assistant can be present, and ask whether a board of county commissioners may contract with an attorney to attend meetings and act as legal adviser in matters which come up at such meetings. As the county commissioners have their regular meeting days synchronously in the different counties, it is quite obvious that the district attorney with one assistant cannot attend such meetings in more than two counties. You correctly say that were it not for the prohibition in Section 15 of Chapter 22 of the Laws of 1909 we would have no doubt that under the general powers conferred upon the boards of county commissioners they could employ counsel to attend their meetings, but I am of opinion that that prohibition worded as it is will not prevent provision being made for such emergencies. That part of the section to be considered is in the first three lines which are "No one shall represent the territory or any county thereof in any matter {*220} in which he may be interested, except the district attorney, his legally appointed and qualified assistants, etc." The word "he" is obviously a mistake and must be read as meaning either the territory or a county. I see no reason why you cannot in counties where you are unable to attend meetings of the county commissioners, create "legally appointed and qualified assistants," with an understanding that the county commissioners must pay them for their services. In view of the proviso which is the last sentence of Section 8 of Chapter 54 of the Laws of 1913 it would be necessary to have the approval of the district judge as to the appointment of any such assistant. It might be argued that said Chapter 54 provides for salaries not only of district attorneys but of all their assistants, but I cannot agree that this is a sound argument.

I found your suggestion that possibly said Section 15 of the Act of 1909 might be considered as having reference only to court work, worthy of careful consideration and I

believe I might have reached the conclusion that such a view could be sustained were it not for the language of the section taken in connection with the second subdivision of Section 2 of the same act. You will notice that Section 15 says that no one shall represent any county except the district attorney, etc., and the remainder of the section appears to indicate that what was intended was representation in court, but the second subdivision of Section 2 makes it the duty of the district attorney "To represent the county before the board of county commissioners." The word "represent" in the two sections must be taken as meaning the same thing. Still, I am not perfectly sure that Section 15 may not be properly limited to cases in court.

The authority of the county commissioners to act is to be found in the fifth subdivision of Section 664 of the Compiled Laws of 1897 where they are given power "To represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law." I think it is clear that in this particular matter, whatever view we may take of the statute of 1909, no adequate provision is made by law for the management of the interest of the county, and that the commissioners would be justified in making the expenditure necessary to secure the advice of a competent attorney.