

Opinion No. 13-1055

June 7, 1913

BY: FRANK W. CLANCY, Attorney General

TO: To the State Highway Commission, Santa Fe, N. M.

ROADS AND BRIDGES.

Powers of county commissioners and county road boards defined as to roads and bridges.

OPINION

{*225} Your letter of the fifth instant was duly received but it has been impossible for me sooner to answer it although I fully realize the fact stated therein that it is of great importance to the public that the questions submitted should be determined as soon as possible.

You first say you are advised that in several counties the county treasurers refuse to pay warrants drawn by the county road boards, claiming that the funds for road and bridge purposes can be disbursed only upon warrants ordered drawn by the county commissioners.

It is difficult to understand how there can be any doubt upon this general proposition in view of the clear and direct legislation to be found in Section 7 of Chapter 54 of the Laws of 1912, which reads as follows:

"All funds that may be derived from taxation, issuance of bonds, gifts or bequests, or from any other source, for road and bridge purposes in the respective counties shall hereafter be expended under the supervision and direction of the County Road Board, and the methods for making such expenditures and accounting therefor shall be the same as those now or hereafter required by law in the case of expenditures made by the boards of county commissioners."

There can be no doubt that the county road boards have full control of the expenditures of all moneys for road and bridge purposes, {*226} with certain exceptions hereinafter noted, and that they are to make the expenditures and account for them in the same manner as expenditures are generally made by the boards of county commissioners. In other words, specifically answering your question, the county road boards are authorized by this statute to draw warrants upon the treasurer just the same as county commissioners are authorized to draw warrants.

I have heard in a rather indefinite way, that some county commissioners were inclined to take the position that as they levied the taxes and thus created county funds, they

should have control of the disbursement of such funds, but this suggestion ignores the extent of the legislative power. The legislature has full control over county officers and the county governments. It can transfer from the county commissioners to any other board or officer, any part of the duties heretofore imposed upon the commissioners, including even the power of levying taxes.

You further say that a question has also arisen as to whether the county road board has the proper authority to build new bridges and to supervise the maintenance of those already built, or whether these powers are lodged in the board of county commissioners.

In a general way, under the provisions of Chapter 54 of the Laws of 1912, all funds for bridge purposes are put under the control of the county road board, but this is subject to some qualifications in view of the enactment by the legislature of Chapter 32 of the Laws of 1913. That act puts under the charge of the board of county commissioners the construction of one class of bridges referred to in that act. This is a substantial re-enactment of Chapter 11 of the Laws of 1899 with some additions and changes. It provides that upon petition of certain specified numbers of taxpayers in the different classes of counties, it is the duty of the board of county commissioners to advertise for bids and specifications with plan or plans attached for a proposed bridge, and in case any bid is accepted there are further provisions for special taxes within specified limits to raise money to pay for such bridge or bridges, and the board may employ someone to supervise the erection of bridges, who shall be paid out of the bridge fund. This act clearly creates a special bridge fund to be raised by taxation as provided in the act which is under the control of the county commissioners, entirely independent of the county road board. As to the construction, maintenance or repair of any other bridges, the county road board clearly has exclusive control under Section 7 hereinbefore quoted, and under Section 8 of the same act, which distinctly gives "authority to construct or improve or aid in constructing or improving any road or bridge within the county." This general authority is in no way impaired by the act of nineteen hundred and thirteen which relates only to a particular class of bridges, as hereinbefore indicated.