

Opinion No. 13-1056

June 6, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Cleofas Romero, Estancia, New Mexico.

COUNTY COMMISSIONERS.

County Commissioners cannot draw mileage.

OPINION

{*227} Your letter of yesterday was duly received and I intended to write an answer this morning so you would have it this afternoon, but it was impossible for me to get any time to do so.

You say that Mr. Valencia believed that he was entitled to mileage at the rate of 12 1/2c for each mile actually traveled and only through ignorance took that money. The mileage which was formerly allowed to county commissioners, under the territorial government, was at the rate of five cents for each mile actually and necessarily traveled, and I cannot understand how it could be claimed that a commissioner was entitled to 12 1/2c unless the mistake grew out of the fact that that was the amount of mileage allowed to sheriffs. Down to the time of the organization of the state government, the commissioner should have received five cents a mile. Since the state government began, in consequence of the provisions in Section 1 of Article X of the Constitution, I am of opinion that even the mileage of five cents was cut off and that it would be proper for commissioners to receive only their actual and necessary expenses in coming to and returning from their meetings, to be allowed like other accounts upon vouchers itemized and sworn to.

The proper course for Mr. Valencia now is to put on the record of the commissioner's proceedings a statement that he had drawn this mileage under a misapprehension of the law, believing he was entitled to it, and that now when his attention has been called to the subject by the Traveling Auditor, he desires to repay the money improperly received. He can then present verified accounts of his actual and necessary expenses and have them allowed and paid to him. This would make the record perfectly proper as far as he is concerned, and I think it is the only correct course for him to follow.