

## Opinion No. 13-1147

December 28, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Honorable O. N. Marron, Santa Fe, New Mexico.

### **HIGHWAYS.**

A state levy of one mill shall be made for roads.

### **OPINION**

{\*328} I have before me your letter of the 23rd inst., in which you call attention to the fact that Section 8, Chapter 42 of the Laws of 1909, provides for a levy not to exceed one mill for road purposes, and to the further fact that by levying that tax in 1912, the remaining three mills of the four authorized to be levied by the Constitution, are not sufficient to pay the running expenses of the state government, and you ask whether the State Highway Commission has the power to compel the levying of a full mill for roads when the proceeds of the three mills are insufficient to pay the current expenses of the state.

If the law of 1909, to which you refer, can be considered as now in force and requiring the levy of one mill for road purposes, it would not be any objection to the making of such levy that its effect might be to curtail the revenue for other state purposes. Officers of the executive department have no authority to question what the legislature has done, nor to make any choice between classes of expenditures for which the taxes are levied and appropriations made. It is clearly within the power of the legislature to direct that one-fourth of the possible revenue of the state shall be devoted to highways, and I believe that it has done so. There might have been some room to argue that, with the inauguration of the new system under the Constitution, by which the levy for state revenue is limited to four mills, the provision in the statute of 1909, by implication, should be considered as repealed, but it is necessary to go into the consideration of that matter, as the state legislature, at its first session, distinctly recognized the existence and continuance of the one mill levy provided by that statute, as you will see by reference to the last sentence of Section 4 of Chapter 58 of the Laws of 1912. It is true that the language there used does not distinctly say that that tax shall be continued, but its continuance is clearly recognized.