

Opinion No. 14-1166

March 10, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. J. L. Lawson, Alamogordo, New Mexico.

ROADS.

Powers of municipalities as to streets under seventh sub-division of Section 2402, C. L. 1897. Road supervisors abolished and their powers vested in county road boards.

OPINION

{*23} I have today seen your letter of the 7th inst., addressed to Mr. George E. Moffett, in which you say that your town board would appreciate it if he would call on me and get my opinion as to whether the latter part of Chapter 54 of the laws of 1912, especially Section 9, is broad enough to repeal that part of Section 1853 of the Compiled Laws of 1897 requiring the mayor and trustees of incorporated towns to appoint a road supervisor in the precinct wherein the incorporated town is located, and after talking with Mr. Moffett we decided it would be better for me to express my views in a letter addressed to you so that there could be no mistake as to my opinion, and so as to avoid my putting myself in the position of giving advice to any county officer whose statutory legal adviser is the District Attorney.

Section 1853 of the Compiled Laws, to which you refer, was originally a part of Chapter 89 of the laws of 1891, and you will notice that by a section of that act, which reappears as Section 1834 of the Compiled Laws, it was provided that there should be a supervisor of roads in each precinct in a county to be appointed by the county commissioners. Section 1853 made an exception as to who should appoint the precinct supervisors of roads in the precincts within which an incorporated city or town might be located. Had it not been for this modification, the county commissioners would have appointed supervisors for those precincts occupied, either in whole or in part, by a municipality. Section 1834 was, however, specifically repealed by Section 22 of Chapter 40 of the laws of 1901, and I believe that Section 1853, if it were not superseded by Section 20 of said Chapter 40, has been superseded by other later legislation. You will notice that said Section 20 authorizes the governing bodies of cities, towns and villages to have all the powers and perform all the duties by the act conferred on the county commissioners and that supervisors appointed by said governing bodies shall superintend and manage the work on roads and streets within the limits of the city, town or village for which they are appointed in the same manner as supervisors of precincts. There is certainly room to contend that this modifies and changes the provisions contained in Section 1853 so as to limit municipally appointed supervisors to a jurisdiction within the municipal limits.

In 1905, by Section 24 of Chapter 124 of the laws of that year, the legislature attempted to destroy the system of numerous precinct supervisors and authorized the county commissioners to divide the {24} counties into suitable road districts and to appoint annually, in each of such districts, a road overseer. As I recollect it was found, however, that in many counties no attention was paid to this provision and in some the commissioners divided counties into districts which would coincide with the precincts. In consequence of this, probably, the legislature at its next session passed an amendatory act, which appears as Chapter 53 of the laws of 1907, by which the above mentioned Section 24 was amended so as to provide that the county commissioners should divide their counties into not more than three road districts, which road districts should be the same as the county commissioner districts, -- each district to have its separate road overseer. No reservation was made as to precincts occupied in whole or in part by cities, towns or villages, and certainly all precinct supervisors, such as are mentioned in Section 1853 of the Compiled Laws, no longer existed. It does not follow, however, that municipal control over streets and public grounds within the municipal limits was taken away from the municipal authorities, but their powers given in the seventh sub-division of Section 2402 of the Compiled Laws of 1897 are left undisturbed.

I am clearly of opinion that even before the legislation of 1912, to which you refer in your letter, all precinct supervisors had been abolished and therefore the power given in Section 1853 to the mayor and common council, or trustees of a town or city to appoint precinct supervisors was gone.

By Section 9 of Chapter 54 of the laws of 1912, to which you particularly refer, it appears that all possible doubt is removed, as that section specifically abolishes the position of road supervisor and vests all power of road supervisors in the county road boards.