

Opinion No. 14-1182

April 7, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable James A. French, State Engineer, Santa Fe, New Mexico.

TAXES.

County commissioners have right to levy taxes for road purposes against property within cities, towns or villages.

OPINION

{*39} You have today shown me a letter from Mr. Francis E. Lester addressed to you asking whether any decision has been made by the courts on the point of whether or not boards of county commissioners have any legal right to levy taxes against property within the corporate limits of cities or towns for road purposes, accompanying this with a statement that the point is about to be raised by a citizen of the town of Las Cruces, who claims that no such authority exists.

The point about which Mr. Lester asks has never been passed upon by the courts so far as I am aware, and this is to be accounted for by the fact that the law is so plain and clear that it is difficult to imagine that anyone would ever make any question about it. The law on the subject is to be found in Section 2 of Chapter 53 of the Laws of 1907, which contains an amendment of Section 25 of Chapter 124 of the Laws of 1905. That amendment reads as follows:

"Sec. 25. The board of county commissioners of the respective counties of the Territory may levy a tax for road purposes, which shall not exceed three mills on the dollar, to be levied and collected in the same manner and at the same time as other property taxes are levied and collected in each year. The commissioners shall apportion the funds so collected for the road districts provided for in Section 24 hereof, and all such taxes shall be paid out only upon the order of the board of county commissioners."

You will note the fact that this tax for road purposes is to be levied and collected in the same manner and at the same time as other property taxes are levied and collected. This puts this tax upon exactly the same footing as any other property tax which the county commissioners are authorized to levy. It is just like the tax for general county purposes or for the court fund and goes against all property in the county, whether within or without the limits of municipalities. {*40} If general county taxes cannot be levied against property within towns, the county governments in several of our counties would have to stop.