

Opinion No. 17-2053

September 21, 1917

BY: MILTON J. HELMICK, Assistant Attorney General

TO: Nicholas & Nicholas, Attorneys at Law, Socorro, New Mexico.

Legality of Certificates of Indebtedness Issued by Socorro County for Road Purposes Under Section 8, Chapter 5, Extra Session 1917.

OPINION

We have your favor of the 15th instant making certain inquiries regarding the legality of certificates issued by Socorro County under the provisions of Section 8 of Chapter 5 of the Laws of the Extraordinary Session of 1917. Answer to your inquiry has been delayed by the unusual pressure of business in the office and by the further fact that I have been unable to locate the form of the certificate. I have just seen one of the forms today. It was printed by the State Record Printing Company, and not by the New Mexico Printing Company, as you stated in your letter. The form, I am told, was drawn by a member of the State Engineer's office. I have examined it carefully and have also discussed it with Mr. Charles Springer, who has been interested in the provisions of the said law. You state that there are three particulars in which you doubt the legality of the certificates issued by the Board of Commissioners of Socorro County: First, that the levy provided for by said section for 1917, has not yet been made in your county; second, that you can find no authority for the issuance of coupon certificates, whereby the interest is paid semiannually; and, third, that you fail to find any authority for the signing of the certificates or the coupons by the County Treasurer.

Your first objection, it seems to me, is obviously well taken. The certificates cannot be issued, in my opinion, until after the levy has been made, and under the facts that you state, I think it is necessary for the county to begin over again. Among the other counties of the State, I believe that special resolutions have been made by the Boards, making the levy for 1917, and authorizing the issuance of the certificates and directing the Treasurer to pay the same, according to their tenor. I would suggest that Socorro County follow this procedure and make sure that the date of the certificate is not prior to the date of the levy.

In answer to your objection that you find no authority for the issuance of coupon certificates, I will say that, in my opinion, no specific statutory authority is required. The statute authorizes the payment of six per cent. interest per annum, and, I believe that the Commissioners have the power to make such interest payable semiannually, or at any time in their discretion. So long as the rate of interest is not exceeded, I see no objection to the Commissioners providing for any time of payment which they may see fit. This view seems to be upheld by the case of *Wilson v. Neal*, 23 Fed. 129.

A portion of your third objection is well taken in my opinion. There is no authority for the County Treasurer signing the certificates, but I think that his signature upon the face of the certificate does not affect the validity of the same, or entail any responsibility upon him. In the case of *Coler v. Santa Fe County*, 6 N.M. 88, I believe it was held that the unauthorized signature of the Probate Judge on some bonds of Santa Fe County, did not invalidate the same. In other words, the signature of the County Treasurer on the certificate is surplusage. However, I notice that the coupons attached to the form you mention, provide a place for the signature of the County Treasurer solely. I do not believe this is valid and I would suggest that the County Clerk's signature be placed there instead. Mr. Springer is inclined to agree with me in this regard and stated that he will make same suggestion to other counties in regard to the signing of the coupons.

I trust that the suggestions contained in this letter will be of service to you and to the officials of Socorro County.