

## Opinion No. 19-2345

August 26, 1919

**BY:** N. D. MEYER, Assistant Attorney General

**TO:** Hon. L. A. Gillett, State Engineer, Santa Fe, N.M.

Right of Eminent Domain for Public Roads.

Definition of Public Roads.

### OPINION

Answering your oral request for the opinion of this office upon the following questions:

1. Who is the proper authority to exercise the power of eminent domain where the State Highway Commission desires to acquire the right of way for a highway, and
2. What roads are public roads or public highways which have not been specifically so established by law or through the action of Boards of County Commissioners, we beg to advise.

Section 12 of Chapter 28, of the Session Laws of 1917, which appear to be the latest legislation on the subject provides:

"That rights of way deemed necessary by the State Highway Commission for highways constructed under the provisions of this act, shall be acquired by the county either by donation by the owners of the lands through which such highways shall pass or by agreement between such owners and the Board of County Commissioners of such county, or through the exercise of the power of eminent domain in the same manner as provided for acquiring property for other public uses."

There is no doubt as to the mode that the right of eminent domain should be exercised from reading the above section. The Board of County Commissioners is the proper body to bring action for the condemnation of lands for a right of way for highway purposes when deemed necessary by the State Highway Commission. It naturally follows that the District Attorney of the district within which the county where the road is sought to be established would act for the Commissioners in bringing such proceedings.

In answer to your second question we beg to refer you to section 2626 of the Code of 1915 which reads as follows:

"All roads and highways, except private roads established in pursuance of any law of New Mexico, and roads dedicated to public use, that have not been vacated or

abandoned, and such other roads as are recognized and maintained by the corporate authorities of any county of New Mexico, are hereby declared to be public highways."

It is the opinion of this office that the roads declared to be public highways by this section are not confined to roads established by the laws of the territory or state, but extend to all roads dedicated to public use which, of course, would include roads which have been used for a long period of years and which have not been abandoned.

Section 2698 of the Codification provides that any person who shall be guilty of obstructing any public road in the State shall upon conviction be fined a sum not to exceed \$ 50.00 or imprisoned in the County jail for a period not to exceed thirty days.

Trusting that your questions have been answered satisfactorily, we beg to remain