

Opinion No. 19-2413

October 25, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: Hon. J. B. Tully, Glencoe, New Mexico.

Counties to Acquire Rights of Way for State Road Purposes.

OPINION

Your letter of recent date addressed to the Attorney General, has been received, but for the reason that both Mr. Askren and Mr. Bowman have been away and that the work in the office has been very heavy, the writer has been unable to give answer thereto before this.

Section 12 of Chapter 38 of the Session Laws of 1917 provides as follows:

"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."

It follows from the above section that it is incumbent upon the county to acquire rights of way for highways and to defray whatever expense results from this action. I am further informed by the State Engineer's office that the practice is just exactly as indicated in the foregoing. They have had many cases similar to yours. The owners of the land have donated the right of way but wherever there was any expense incurred on account of improvements, such as fences, etc., the county reimbursed the party through whose land said highways passed. The fact that the State Highway Commission has adopted the road running through your land for construction and maintenance, does not alter the case, therefore, we hold that the Board of County Commissioners should reimburse you the cost of constructing the fences made necessary on account of the new road.