

Opinion No. 20-2671

August 26, 1920

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. L. A. Gillett, State Highway Engineer, Santa Fe, New Mexico.

State Highway Commission Authorized to Grant Franchises for Use of Highways.

OPINION

Replying to your letter of the 19th instant, enclosing one from Mr. Laurence F. Lee, of Albuquerque, in regard to the question of the granting of franchises for street car lines on North Fourth street out of Albuquerque, we would advise you as follows:

We assume that the franchise which will be requested is for a right to construct a street car line outside of the city limits of the City of Albuquerque.

Section 1023, Code 1915, grants to the Boards of County Commissioners the authority to permit corporations to use public highways and streets and alleys of unincorporated towns for the purposes of erecting poles for the objects mentioned in Section 1021 preceeding. We find no specific authority in the Board of County Commissioners to grant the use of the highways for the construction of a street railway unless it be contained in Section 1022, which provides that such corporations may use the highways, subject to the regulation of the County Commissioners and local municipal authorities.

Section 14, Chapter 38, Laws 1917, does not, as we construe it, grant to the Highway Commission the exclusive jurisdiction to authorize the use of highways for any purpose whatsoever. The last part of this section grants to the Commission the authority to prescribe as to the location of poles, or telephone or electrical transmission lines, or railways, but goes no farther than that.

The 1919 Legislature, however, evidently with the 1917 Statute in mind, passed Section 13, Chapter 99, Laws 1919, wherein the full control over all routes designated by the said Commission as state highways, or created as state highways by Act of the Legislature, was placed in the State Highway Commission.

We do not believe that stronger language could be used than that which is contained in this section, and that it was the intent that the State Highway Commission should have full jurisdiction, power and control over all state highways, and that, therefore, the State Highway Commission would be the only body authorized by law at this time to grant franchises for the building of a street car line outside of the municipal corporation.

We are returning herewith the letter from Mr. Laurence F. Lee, which accompanied your letter of the 16th.