

## Opinion No. 22-3270

February 11, 1922

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Mr. Albert G. Simms, Chairman, Board of County Commissioners, Albuquerque, New Mexico.

### **Use of County Flood Funds for Flood Prevention Purposes.**

#### **OPINION**

{\*120} Complying with your request over the telephone this morning for an opinion regarding the right and duty of the County Flood Commissioner to expend moneys in the county flood fund for the purpose of preventing future damage by streams, there being no threatened danger at the present time, I wish to advise you as follows:

The Legislature of 1921 passed two separate acts relative to flood protection, the first, Chapter 163, Laws 1921, providing for the appointment of a county flood commissioner and prescribing his duties and the method of expending the moneys in the county flood fund, and the second, being Chapter 169 of the Laws of 1921, which provides for the creation of emergency flood districts and the appointment of an emergency flood superintendent, and prescribing the procedure to be adopted in emergency flood cases.

You will note that by the provisions of Section 3, Chapter 162, the flood commissioners are authorized and empowered, in their discretion, "to construct or cause to be constructed, built and maintained, dykes, embankments, dams and ditches, or other structures or excavations as may be necessary to control such flood water and protect life and property in their said counties against loss and damage," etc.

The powers herein granted are almost as broad and comprehensive as language can make them, and there is no question but what the section authorizes the expenditure of county flood funds for preventive purposes.

You ask if moneys from the county flood fund can be expended to drive piles and construct dykes to divert a stream from its present course in order to prevent future damage to farm lands along such stream.

In my opinion, there is no question but what such funds may be so used for such a purpose and, in fact, it is quite clear that Chapter 163 was passed for the very purpose of taking any preventive measures that might be necessary to control or divert streams in order to save injury to abutting lands upon such streams.

It would appear as if the Flood Commissioner in one case, and the Flood Superintendent in the other case, would be authorized to expend the moneys collected for the very purposes mentioned in your inquiry.