

Opinion No. 39-3256

August 23, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. C. R. Sebastian, State Comptroller, Santa Fe, New Mexico.

{*97} In your recent letter you state that a question has been raised in some counties with reference to the employment of a purchasing agent for the county. You inquire whether such employment is in conflict with Chapter 58, Laws of 1939, which provides that there shall be no compensation for county officials except as "authorized by law."

In 1915 a complete salary statute was adopted, and as a part of that statute Section 6 provided that "no county officer shall accept or receive to his own use, or for or on account of any deputy or deputies, clerk or clerks appointed by him or employed in his office, or for or on account of expenses incurred by him or by any such deputy or deputies, clerk or clerks, or for or on account of his office, any salary, compensation, allowance, fees or emoluments in any form whatsoever, other than as by this act allowed." This Section 6 appears as Section 33-3206, 1929 Compilation, and Chapter 58 of the Laws of 1939 is merely an amendment to that section changing the last five words so as to read "other than authorized by law." It will be observed that since that salary statute other separate statutes have been enacted providing for additional assistants and additional salaries, one of which may be found in Section 34-428, 1929 Compilation, and it is quite likely that the legislature amended this section so that there would be no conflict.

At any rate, it is my opinion that if purchasing agents could be employed by the county commissioners prior to this amendment, they can be so employed now; that if the legislature had intended to prohibit the practice of employing purchasing agents or other employees, it would have used language clearly indicating that intention, and that the change above referred to is not sufficient for that purpose.

As early as 1930 the State Tax Commission, so I am informed, approved the appointment of a purchasing agent in at least one county as a separate employee appointed by the county commissioners, paid {*98} by them from county funds, and answerable to them only. Since that time budgets have been approved in some counties making provision for such employee. Clearly the administrative departments of the state, including no doubt the Comptroller's office, have considered that the county commissioners had the power to employ such an agent under its general powers.

In this I believe they were correct. These powers are contained in Sections 33-3601, 33-4213 and 33-4215, 1929 Compilation, the latter of which confers upon such boards the power to "have the care of the county property and the management of the interests of the county in all cases where no other provision is made by law." This last one was

stated by Justice Parker in *State v. Montoya*, 20 N.M. 104, at 113, to contain "an exceedingly broad grant of power."

The general rule is that county commissioners are without power to employ a person to perform acts which are part of the official duties imposed by statute on another county or state officer, or where the matter of employment of persons for particular services is expressly and fully covered by statute, but "with these limitations county boards have implied power to employ such agents and servants as may be required for county purposes and which are not otherwise provided for by statute or by the state constitution; and the wisdom and expediency of making a particular contract of employment is within the exclusive discretion of the board." 15 C.J. 546.

It is my opinion, therefore, that county commissioners may in their discretion appoint purchasing agents or other servants necessary to efficiently carry out the business of the county.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.