

**Opinion No. 42-3986**

January 10, 1942

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. C. B. Beyer County Flood Commissioner Bernalillo County Albuquerque, New Mexico

{\*142} This will acknowledge receipt {\*143} of your letter dated January 9, 1942.

You state that the auditing firm of Linder, Burke and Stephenson, in its last fiscal report covering the affairs of Bernalillo County, directs attention to the fact that the flood fund of the county is being handled in a manner contrary to statute. The method employed is as follows:

Standard payroll and claim voucher forms are used, which forms are approved before payment by the Flood Commissioner, then filed with the County Clerk. Payment is made with a special warrant form as follows:

"Warrant Record Page \_\_\_ No. \_\_\_

STATE OF NEW MEXICO

Bernalillo County

Albuquerque, N. M., \_\_\_ 193 \_\_\_ Pay to the Order of \_\_\_ \$ \_\_\_ \_\_\_ Dollars Out of the Flood Protection Fund, being the amount allowed by the Flood Commissioner of said County for \_\_\_ Subject, however, to the payment of any taxes, penalties and costs thereon due from the payee or any assignee, as shown by the tax rolls of said County, which is to be deducted herefrom.

\_\_\_

Flood Commissioner of Bernalillo County.

Attest: \_\_\_ County Clerk"

TO THE TREASURER OF BERNALILLO COUNTY, Albuquerque, New Mexico

which form is signed by the Flood Commissioner and County Clerk, and countersigned on the reverse side thereof by the County Treasurer.

You further state that it is the contention of the auditors that flood funds are included in the common funds of the county, and that the sole power of disbursement thereof is vested in the Board of County Commissioners.

Section 33-5006, New Mexico Statutes Annotated, 1929 Compilation, provides in part as follows:

"\* \* \* All expenses and indebtedness incurred by any county flood commissioner under the provisions of this act shall be paid upon warrant or warrants drawn by the county flood commissioner and counter-signed by the county clerk, upon the filing by the county flood commissioner of vouchers for such expenditures and indebtedness with the county clerk. Such warrants shall be paid by the county treasurer out of the county flood fund.\* \*"

In view of the foregoing, I advise that the disbursement of flood funds is not vested in the Board of County Commissioners, but, to the contrary, it is my opinion that the disbursement of said funds is vested solely in the County Flood Commissioner by virtue of the foregoing statute.

The above quoted special warrant is in proper form and the same procedure should be followed in the future in disbursing county flood funds as has been followed in the past in Bernalillo County.