

Opinion No. 47-4975

January 11, 1947

BY: C. C. McCULLOH, Attorney General

TO: Mr. Richard Rowley, Assistant District Attorney, Clovis, New Mexico.

{*4} We wish to acknowledge receipt of your letter of the 6th of January. wherein you made inquiry as to whether or not Chapter 68 of the Law of 1845 makes it mandatory for the county commissioners to pay for a deputy county official's bond when required by the elected official.

While it is the general rule that the use of the word "may" in a statute is primarily and ordinarily a permissive term and not peremptory, nevertheless, when the rights of the public or of other persons are dependent on the exercise of the power conferred, the word "may" takes on the mandatory form. (See *River Farms Co. of Cal. vs. Gibson*, 42 P. 2d 95, 102; 4 Cal. App. 2nd, 731; also see *Appeal of Burnap*, 108 A. 802, 804; 94 Conn. 286.

It is my opinion that the aforementioned statute is mandatory in form, and as long as the bond required by the elected county official for his deputy or deputies is reasonable in the light of all circumstances, the county commissioners cannot refuse to have a deputy bonded, and the premium for same must be paid by the county from the general fund.

Trusting the foregoing satisfies your inquiry, I am

By: ROBERT V. WOLLARD,

Asst. Atty. General