

Opinion No. 52-5535

May 1, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Edward Hartman State Comptroller Santa Fe, New Mexico

{*246} This office is in receipt of your inquiry of recent date pertaining to the powers of County Flood Control Commissioners. The creation of that office and the powers of the Flood Control Commissioner are defined in 15-4701 et seq., N.M.S.A.

You inquire whether it is necessary for the Flood Control Commissioner to have vouchers drawn by him against the County Flood Fund and countersigned by the County Clerk, submitted to the County Commissioners for their approval and signatures.

In an earlier opinion this office, in Opinion No. 3986 issued on January 10, 1942, held that the distribution of Flood Funds is not vested in the Board of County Commissioners but is vested solely in the County Flood Commissioner by virtue of the statute. The statute then under consideration was 33-5006, N.M.S.A., 1929, which is identical with 15-4706, N.M.S.A., 1941, conferring the same power upon the Flood Control Commissioner. Therefore the same ruling prevails.

It is true that 15-4701, et seq., N.M.S.A., contemplates the creation of County Flood Fund by the levy of a tax and that in the situation you describe apparently the fund has been created by county appropriation, budgeting, and allocation to the fund for the use of the County Flood Commissioner.

It is my opinion that even though the fund has been created by appropriation, budgeting, and allocation as above indicated, rather than by tax levy, so long as the funds remain in the County Flood Fund, they are to be disbursed by the County Flood Control Commissioner as provided by the statute and as indicated herein.

You next inquire whether such County Flood Control Commissioner may employ an attorney to assist him in carrying out his duties under this act and whether he may expend such funds for the preparation of a preliminary engineering plan and the initiation of proceedings necessary to create a Conservancy District under the New Mexico Conservancy Act adequate to afford protection from flood damage to property within the County of Bernalillo.

It is to be noted that while the statute creates the office of County Flood Control Commissioner, that office, not being elective, differs from other County offices and is not subject to the constitutional provisions governing elected county officials as to the length of time such county officers may serve.

It is to be further noted that 15-4703, N.M.S.A., 1941, authorizes the County Flood Control Commissioners to do all acts and things which in their discretion shall be necessary to carry into effect the terms of the act. Without specifically passing upon the question, of the power of the County Flood Commissioner to create a Conservancy {*247} District -- which is not directly at issue -- it is my opinion that the County Flood Control Commissioner may do all acts necessary to carry into effect the terms of the act and if the employment of an attorney or an engineer or others for varied purposes to initiate or to carry through a program of flood control is reasonably necessary to accomplish the purposes of the act, such employment is authorized.

I trust this gives you the information you desire.