

## Opinion No. 12-928

August 1, 1912

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. Howell Ernest, Traveling Auditor, East Las Vegas, N. M.

### **FISCAL YEAR.**

"Last preceding year" means fiscal year ending on the 30th of the preceding November.

### **OPINION**

{\*71} I have before me by reference from your office the letter from Mr. James G. Fitch of July 15th relative to bonds of the county treasurer of Socorro county, and I have examined the same with some care.

In view of the fact that a newly-elected treasurer takes office at the beginning of a calendar year, and at that time is to give a bond, the contention of Mr. Fitch that the last preceding year mentioned in Section 3 of Chapter 122 of the Laws of 1909, means the preceding calendar year is plausible, and at the first glance seems unanswerable. I incline to the belief, however, that we should consider that this means the last fiscal year ending on the 30th of the next preceding November. There are several reasons which can be urged for this, the first of which is that practically the judge can immediately have information as to the full amount of collections up to the first of December, while there may be some difficulty in ascertaining the amount collected during December for which settlements have not been made. Another is to be found in the fact that all such fiscal matters should be governed by the fiscal year and there is some legislation which can properly be considered in connection with the act of 1909 corroborating this. For instance, Chapter 60 of the Laws of 1905, which imposes upon you the duty of classifying the several counties for the purpose of fixing compensation of county officers, requires you to base that qualification upon the sums paid to the territorial treasurer by the collectors for the fiscal year ending on November 30th next previous to the year for which services are to be rendered. This act is one the same general subject of county officers and may well be considered in connection with the act of 1909 to ascertain what the legislature meant by the "last preceding year."

The second and third contentions set out by Mr. Fitch are to the effect that the district judge who approves the bond is the proper person to determine its amount, and that you have nothing {\*72} whatever to do with it and have no control or authority over these bonds. I agree that the district judge is the proper person to determine the amount of the bond, but I do not agree that it is none of your business to see that proper bonds are given. You may not have power directly to compel a treasurer to give such a bond, but if in any particular case you find he has not done so you could properly report the matter to the district judge, the district attorney and the attorney general. In the act

creating your office it is specifically made your duty to examine and audit the accounts of the county treasurers and collectors, and in connection with such examination a due regard for the public interest makes it proper for you to ascertain the condition of the official securities given by those officers and to take steps to see that any insufficient or defective bond is replaced by a proper one. Also, in the last act of the legislature on this subject, which will be Chapter 61 of the Laws of 1912, in connection with such examinations you are directed to make inquiry generally as to "whether the requirements of the law have been complied with" and such other matters as you may prescribe.

Practically I see no reason for any controversy with Mr. Fitch or with the county treasurer, as those gentlemen very properly desire to submit the questions involved to the district judge, and I cannot see that the public interest would in any way suffer by a little delay until the judge of that district returns, and then I think you should submit to him your statement of the collections made, of the proper amount of bond to be given, and of the amount of bond actually given.

I return Mr. Fitch's letter herewith.