

Opinion No. 13-1008

April 7, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Howell Earnest, Traveling Auditor, Santa Fe, N. M.

COUNTY ROAD BOARD.

As to jurisdiction of aside from that of county commissioners.

OPINION

{*172} I have before me two letters referred to me by you, one from Mr. F. L. Dearborne, Secretary and Treasurer of the County Road Board of Eddy County, and the other from Mr. W. H. Merchant, Treasurer and Collector of the same county.

Mr. Dearborne says that he has been notified by the treasurer that you have instructed him not to pay orders drawn by the County {*173} Road Board on the special bridge fund or road and bridge fund, unless approved by you, but Mr. Merchant's letter seems to indicate that he had merely refused to pay two warrants unless they were approved by you. Mr. Merchant says that the road districts of Eddy County carry special levies, but I think that he does not intend to be understood that there is a special levy in each district, but rather that the money produced by the general road tax should be apportioned to the road districts, making a separate fund for each district.

My impression had been that by the act creating the county road boards, which is Chapter 54 of the Laws of 1912, the district system had been entirely abrogated and the county road board given jurisdiction over the county without regard to the matter of districts; but upon further examination this does not seem entirely clear. By the amendments to Chapter 124 of the Laws of 1905, which are contained in Chapter 53 of the Laws of 1907, the county commissioners are directed to divide their counties "into not more than three road districts, which said districts shall be the same as the county commissioner districts of the county"; and by the next section they are authorized to levy a tax for road purposes not exceeding three mills on the dollar and directed to apportion the proceeds of such tax for the road districts, provided for in the preceding section. They are also to appoint a road overseer for each district, who is to perform various duties in his district. It is quite certain that the act of 1912 transfers all powers and duties of the road supervisor to the new county road boards, but that act does not distinctly indicate that the system of districts is abolished, or the authority to make the road districts transferred to the county road board. Neither does it seem that the authority, to apportion the funds arising from the road tax to the different districts, has been taken away from the county commissioners, but the expenditure of those moneys is, by the new act, clearly committed to the supervision and direction of the county road board.

If these views are correct, the moneys should be apportioned to the different districts and the county road board could then draw warrants upon the funds of the particular district in, or for, which the work is done.

I am not quite certain as to what is meant, in the letters sent, by "special bridge fund," unless it might be a fund created in pursuance of the provisions of Chapter 11 of the Laws of 1899 as amended by Chapter 56 of the Laws of 1909. That fund appears to remain under the exclusive control of the board of county commissioners and that this is a correct view of the intention of the legislature, is corroborated by the fact that at the last session of the state legislature a statute was adopted which is, substantially, a re-enactment of the law of 1899, with a section distinctly committing even the supervision of the construction of such bridges to the county commissioners in addition to the authority to make contracts and levy taxes.