

Opinion No. 13-1020

April 18, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable George E. Remley, District Attorney, Raton, N. M.

SALARIES OF COUNTY OFFICERS.

County Commissioners may advance money to county officers to pay living expenses.

OPINION

{*183} Referring again to the subject, of which you wrote me on the 11th of April, as to making some provision by which county officers, whose salaries have not been fixed by statute, can be paid in whole or in part for their services, in the absence of any legislation relating thereto, I am compelled to agree with you that there is no method provided by any existing statute for such payment, but I believe that the county commissioners would be justified, as a matter of absolute necessity, in order to continue the county government in operation, to advance to those county officers, for whom no salary is provided, a sufficient amount of money to pay living expenses, to be accounted for in settlements to be made after the legislature shall have fixed their salaries.

I will not venture to predict what the courts might hold if some tax payer should seek to enjoin the making of such advances, as there is room for wide differences of opinion. What I suggest is based upon the consideration that the Constitution, while prohibiting any county officer from receiving any fees or emoluments other than the annual salary provided by law, clearly contemplates that all county officers shall receive compensation for their official services. It is enjoined upon the legislature to classify counties and fix salaries for all county officers and, while that duty has not been effectively performed up to the present time, we must assume that sooner or later the legislature will perform that duty. In the meantime, public interest requires the exercise and discharge of the powers and duties conferred and imposed upon the county officers, and a very large portion of those officers cannot possibly do what is required of them without money to live upon. It is not reasonable that they should be subjected to the burden of borrowing money upon their personal credit and paying interest therefor, and there may be some of them whose credit would not be equal to so much of a strain. In view of the certainty that the legislature will provide adequate and proper salaries to cover the period for which the county officers have served, or may serve, I {*184} believe that the county commissioners will be justified in advancing such small amounts as may be absolutely necessary to enable the officers to live, being careful to keep well inside of the amounts of salaries which will probably be provided.

Further foundation for the exercise of such discretion can be found in the fifth subdivision of Section 664 of the Compiled Laws of 1897, which gives to the county

commissioners power as to "the management of the interest of the county in all cases where no other provision is made by law."

There are certain county officers whose salaries, fixed by territorial statutes, may properly be payable, as I have heretofore held in a circular letter, which I sent to all district attorneys, and what I now say, of course, has no reference to those officers.