

Opinion No. 13-1009

April 7, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Honorable W. E. Kelley, Socorro, N. M.

BONDS.

State Board of Loan Commissioners has no jurisdiction of claim except those evidenced by bonds of the Territory or counties.

OPINION

{*174} Your letter of the 25th of March was received here after I had gone to Lincoln County to assist in the prosecution of a murder case, and since my return to the office, on last Thursday, I have been very closely occupied with pressing official matters which had accumulated during my absence, so that I have not been able sooner to write to you.

The view taken by the Loan Commission is that, considering the whole of Chapter 16 of the Laws of 1912, which created the Board of Loan Commissioners, the legislature did not intend to confer jurisdiction upon the Commission to consider anything except claims evidenced by bonds of the territory, or by any act of the legislative assembly, or by bonds of counties and past due and unpaid coupons thereon and by judgments recovered upon such past due coupons. In taking this view, we did not overlook the fact that, by Section 7 of the act, all persons having any claim against any county upon debts valid and subsisting on June 20, 1910, might submit the same to the Board of Loan Commissioners and that the board should then investigate and determine the validity of those claims. The next section, however, limits the authority of the board to issue bonds for the payment or refunding of debts and liabilities to those debts and liabilities evidenced as above stated. If Section 7 stood alone, we would clearly be authorized to investigate and determine the validity of any claim presented, but Section 8 so limits our power as to any relief to be given, that it would be an idle form for us to attempt to consider any claims other than those indicated by Section 8.

Early in the last session of the legislature, I prepared an amendatory act to remove this limitation and also to diminish the expense of the advertising required. The bill was referred to the Senate Finance Committee, of which Mr. John Clark of Las Vegas was chairman, and he would not permit any report to be made on the bill, either favorable or otherwise. We urged these amendments upon the attention of members of the legislature, but without avail. Mr. Clark stated that he was opposed to anything of the kind as it would open the door to the presentation of a large amount of fraudulent claims, which he knew existed in his own county of San Miguel. We sought to meet this opposition by providing that all claims evidenced otherwise than as prescribed in

Section 8, should first be reduced to judgments in the District Courts, but he would not consider any such proposition.

I would much prefer that the Commission should examine and determine the validity of claims of all kinds and if you can convince a court that we have the jurisdiction, effectively to do so, the members {*175} of the Commission will gladly conform to any such decision. I think with you that probably your remedy is by way of mandamus to require the board to take jurisdiction, and I see no objection to your coupling with that a further command that the board should issue bonds as authorized in Section 8, provided that the board decides in favor of the validity of your claims so that both points can be presented in one proceeding. If you limit the scope of the proceeding to the question of our taking jurisdiction under Section 7, we might, if you could succeed in that, be confronted later with the difficulty of giving any relief under Section 8.

I think that the proper court in which to institute such a proceeding would be the District Court of Santa Fe County, as there is an old statute, to which I cannot at this moment make reference, which provides, in substance, that actions against territorial officers must be instituted in the county where the seat of government is located, although the Supreme Court is, by the Constitution, given original jurisdiction in quo warranto and mandamus against state boards and commissions. That court, however, has held that it is not compelled to take such jurisdiction and has refused, in at least one case, to do so. On behalf of the Commission, I will do everything possible to expedite and hasten the proceedings and will waive the actual issuance of any alternative writ and make answer to your information the same as though the writ were issued.

I agree with you as to the hardship upon claimants, who have waited for years to obtain a settlement of their claims, but I think you will agree that this board can exercise no jurisdiction beyond that which was clearly conferred by the legislature, no matter how unjust and unfair the legislative provisions may appear to be.