

Opinion No. 12-972

December 31, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. John Becker, Jr., Secretary, County Road Board, Belen, N. M.

ROADS AND BRIDGES.

Proceeds of sale in state highway bonds to be expended by the State Highway Commission.

OPINION

{*133} I have today received your letter of yesterday in which you inquire as to whether there is any obstacle to the use by the county of its share of the bond issue recently voted at the state election, for the construction of a bridge over the Rio Grande at Belen. I think that as to whether such use can be made of the money or not must depend upon the action of the state highway commission. The act authorizing the issuance of the bonds which was submitted to the voters, declares in its first section that the indebtedness of five hundred thousand dollars is to be incurred for the purpose of providing payment of the cost of the construction and maintenance of a system of state highways, but it does not distinctly indicate by whom that system is to be created. There is a further provision in Section 4 of the act that the moneys arising from the sale of the bonds shall be used exclusively for the construction and maintenance of said system of state highways. In order to get some light on the subject of the system of state highways we must look to other statutes. Chapter 54 of the Laws of 1912 creates the present state highway commission which succeeds to the duties of the territorial road commission which was created by Chapter 42 of the Laws of 1909, and in addition the new commission has "charge of all matters pertaining to the expenditure of the state road fund in the construction, improvement and maintenance of public roads and bridges in the state." Going further back we find that the territorial roads commission created by the act above referred to of 1909 was given general charge and supervision of all highways and bridges in the territory, constructed or maintained in whole or in part by the aid of territorial moneys, and it was made the duty of that commission to construct, repair and maintain such roads as highways as in their judgment would best serve the interest of the public "looking to the construction and maintenance of a complete system of highways in the territory." In another section it is further made "the duty of the said commission to investigate the need of various localities in the territory in regard to public roads and to determine what roads shall be constructed or repaired, and to co-operate with the various boards of county commissioners in the construction of such roads and highways."

These various statutory provisions are all in full force and while they do not in so many words give the commission authority to establish the system of state highways, yet all of

them taken together show that that commission must do that work. Therefore, as to the expenditure of the share of Valencia county of the proceeds of bonds authorized at the recent election, which must be expended upon state {^{*}134} highways, such expenditure must be made upon those roads established by the state highway commission as a part of the system of state highways. That which you desire must be submitted to the state highway commission.

As to when any money will be available of the proposed bond issue, I am unable to say. The act of the legislature fixes the rate of interest on the bonds at four per cent, and requires that they shall be sold at not less than par with accrued interest, and the present condition of the bond market is such that I am assured it will be impossible to sell a four per cent bond at par. Bids were received by the loan commission yesterday for bonds to be issued to take up a large part of the debt of Santa Fe county, and the lowest rate of interest specified in the bids was four and three-quarters per cent. In view, however, of the general interest in the construction of good roads it may be possible that the bonds can be sold to people within our own borders.