

## Opinion No. 13-1022

April 22, 1913

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

**TO:** Mr. James A. French, State Engineer, Santa Fe, New Mexico.

### **RIVER COMMISSIONERS.**

River commissioners given power to do what is necessary for protection of property against damage by waters of Rio Grande.

### **OPINION**

{\*186} A few days since you called my attention to the subject of river commissioners elected in the valley of the Rio Grande and their powers, and it now seems advisable that I should, in writing, state, in substance, what I then said to you as to the condition of the law.

By Chapter 18 of the Laws of 1905, as amended by Chapter 35 of the Laws of the same year, it is provided that there shall be elected at each general election in the counties of Valencia, Socorro, Dona Ana and Sandoval, by the electors of the precincts along the margins of the Rio Grande del Norte, five persons, legal voters in each of said counties and precincts, who shall constitute a board of river commissioners for each county, respectively, and such commissioners shall hold their office until their successors shall be duly qualified. It is to be noted that, under this provision, if there has been any failure to elect such river commissioners, the offices have not become vacant, as those in office hold until their successors are qualified.

The act also makes all cultivated or improved real property in the valley of the Rio Grande subject to taxation for the purposes of the act, and provides that every owner of property in the valley within five miles of either side of the river is required to pay in proportion to the value of his property to the river commissioners a pro rata share of the labor necessary to prevent damage and injury by the waters of the river.

It is made the duty of the river commissioners to give each of such owners notice of the number of days labor required of him and the time when it will be required, and it then becomes the duty of the owner or owners to furnish the river commissioners with the labor specified, or pay to them \$ 1.00 for each day's labor required, but the liability of any one owner shall not aggregate more than \$ 20.00 in any one year. There is a further provision that when teams and scrapers, or teams and wagons, are necessary the commissioners shall so state in their notice and they may be furnished in lieu of labor at the rate of \$ 2.00 per day for each team and scraper and each team and wagon.

There is a further provision requiring all able-bodied men over twenty-one and under sixty years of age, residing in the valley, or within five miles of either side of the river, to furnish not to exceed three days labor or cash at the rate of \$ 1.00 for each day's labor.

The river commissioners are given various powers by the act such as fixing the pro rata amount of labor by each owner, directing and superintending the doing of all work and the expenditure of all {\*187} money and power of eminent domain. As to the last power, attention should be called also to Chapter 82 of the Laws of 1909 which more definitely fixes the procedure.

If there should be any vacancy in the river commissioners the county commissioners may fill the vacancy by appointment.

Any owner or person who refuses or neglects to furnish labor or the money value thereof is guilty of a misdemeanor and may be punished accordingly.

It will be seen from the foregoing summary of the statute that not only are the river commissioners given power to do what is necessary for the protection of property against damage by the waters of the Rio Grande, but it is made their duty to exercise such powers, and failure or refusal on the part of persons called upon to contribute labor, or money, is made a criminal offense.

I write this letter to you because I understand that it may aid you in procuring the active assistance and co-operation of the river commissioners in the counties named and of the owners of property and inhabitants in the valley of the Rio Grande.