

## Opinion No. 13-1012

April 7, 1913

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

**TO:** Hon. James A. French, State Engineer, Santa Fe, N. M.

### **ROADS.**

As to jurisdiction of county commissioners and county road boards in the matter of opening up new roads.

### **OPINION**

{\*176} Your letter of March 20 transmitting another from the secretary and treasurer of the Valencia county road board for an opinion, was duly received, but I had no time to give it any attention before I was compelled to go to the district court in Lincoln county and since my return on Thursday last I have not been able to catch up with the current pressing work of the office.

Mr. Becker, as you summarize his letter, wishes to know what right the county road board has in opening up new roads and whether it is necessary to appoint viewers when the board has a definite course in view to connect two points.

This presents a question which cannot be fully and satisfactorily answered. The language of Chapter 54 of the Laws of 1912 which created the county road boards, is so meager that it is very difficult to say just how far the powers of the county road board extend and {\*177} how much of power is still with the county commissioners. The act does not give the county road boards distinct authority to establish a new road or to condemn land for the purpose of new roads. The nearest approach to any such authority is in the language which gives them power to "select and lay out a system of prospective county highways." In doing such work they must co-operate with the state highway commission, but even that commission is probably not vested with the power of eminent domain so as to take land held in private ownership for road purposes. If this view is correct then we are necessarily remitted to the previous law on this subject which is to be found in Chapter 124 of the Laws of 1905 which commits the matter to administration by the board of county commissioners. If the county commissioners will not harmonize with the county road boards and the state highway commission and exercise the powers conferred by the act of 1905 in accordance with the plans of the road boards and state commission, it is difficult to say where the authority of one begins and the other leaves off, and possibly resort must be had to the courts to obtain a judicial declaration of the respective powers of these different bodies.

It is hardly necessary to call attention to the fact that no public officer or board can take any person's land for a public purpose without compensation being made for such land,

and any such officer or board can proceed to take such land only when distinctly authorized by the legislature and only in the manner prescribed by the legislature.

I return Mr. Becker's letter herewith.