

Opinion No. 13-1018

April 16, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Eugene Kempenich, Chairman, Board of County Commissioners, Peralta, New Mexico.

ROADS.

County Commissioners shall establish roads.

OPINION

{*182} Your letter of the 14th inst. was received yesterday, but I had no time to answer until today, as I was compelled to go to Albuquerque, returning this morning.

I think it would be preferable if we could hold that the power conferred upon the Board of County Commissioners, by Chapter 124 of the Laws of 1905, with regard to the establishment of roads and the condemnation of land when any is taken from private owners against their will, is now vested in the County Road Board, as it is likely to lead to confusion and difficulty to have powers as to road matters divided between two different boards, but I am unable to find anything in the language of the Chapter 54 of the Laws of 1912, by which the County Road Boards were created, to justify the belief that the new boards can exercise any power or authority vested in the County Commissioners by the act of 1905. After a road has been established by the County Commissioners and declared to be a public road, then it seems clear, by Section 8 of the Act of 1912, that work on that road should be done by the County Road Board and, under Section 7, the expenditure of all funds for such a road is to be under the supervision and direction of the County Road Board.

You speak of there being a number of roads in the county which have never been declared public roads, but if they have been actually used by the public for as much as ten years there would be no need of condemning the land or paying anything for it, as the statute of limitations would operate to prevent the owner now making claim for compensation. Probably in most cases, even if the use has been for less than ten years, the owners of the land would be willing to give their consent to the use of their land for the roads. With regard {*183} to any proceeding as to such roads, in view of the board, although ill defined powers given the county road boards in Section 8 above referred to, it would be well, wherever harmony and co-operation can be had, for the County Commissioners and the County Road Board to act together.