

Opinion No. 13-1039

May 12, 1913

BY: FRANK W. CLANCY, Attorney General

TO: H. B. Jamison, Assistant District Attorney, Albuquerque, New Mexico.

BRIDGES.

County Commissioners have jurisdiction of construction of bridges mentioned in Ch. 32, Laws of 1913.

OPINION

{*204} I have received your letter of the 10th inst. in which you say that the County Commissioners have requested you to give them an opinion as to whether or not the jurisdiction over bridges, both for construction and for maintenance and repair, has been restored to them by Chapter 32 of the Laws of 1913, and you say that you would appreciate my opinion on the subject.

Chapter 32 of the Laws of 1913 is, substantially, a re-enactment of Chapter 11 of the Laws of 1899, with some changes and additions, and even before its passage I was of opinion that the jurisdiction of the County Commissioners over the class of bridges referred to in the act of 1899, had not been disturbed by Chapter 54 of the Laws of 1912, which created the county road boards, but I was of opinion that as to all other bridge construction was transferred to the county road board and I do not find anything in the last act to change my opinion.

You will notice that act refers to no bridges except those, the initiation of proceedings for the construction of which must be by petition, of specified numbers of tax payers on property, the number varying in counties of three classes created by Section 2. Upon the presentation of such a petition, it is made the duty of the board to advertise for bids for specifications with plans attached, and the board is authorized, if it deems proper to do so, to accept and approve the lowest and best bid and to levy taxes as provided in the act, with certain limitations to raise the money to pay for the construction of such a bridge. It is true that the first sentence of Section 6 of the act declares that County Commissioners "may employ the county surveyor, or some other competent person, to supervise the erection of bridges, who shall be paid out of said bridge fund;" and a part of this language, if it stood alone, would seem to put the employment of some person to supervise the erection of all bridges in the hands of the County Commissioners, but the last words, to the effect that such person "shall be paid out of said bridge fund," clearly limits the bridges intended to those provided for in this particular act. The said bridge fund cannot extend to any other fund than that which is created by the act and the remainder of Section 6, which forbids payment for any bridge "construction under this act" until the same has been approved by the person employed by the County

Commissioners, strengthens the view that the whole act is limited to the particular kind of bridges therein provided for.

Moreover the county road board act distinctly gives to the county road boards the expenditure of all moneys for road and bridge purposes {*205} and gives those boards authority to construct or improve any road or bridge within the county and to maintain and repair the same. Repeals by implication are never favored, and if the two acts can stand together both should be considered as remaining in force. With this rule of construction in mind, it seems plain that the legislature did not intend to take away from the county road boards the general jurisdiction conferred as to the construction and repair of bridges, but did intend to commit entirely to the County Commissioners everything in connection with the construction of the larger and more important bridges which might be asked for by petition of tax payers.

Practically, I trust that there will be no dispute between any board of county commissioners and any county road board on questions of jurisdiction, but that both boards can act together and harmoniously. It is quite clear that as to several matters the county road boards cannot effectively accomplish the purposes for which they were created, as shown by the statute, without the assistance and co-operation of the county commissioners and, conversely, there are road matters as to which the powers remaining with the county commissioners cannot be satisfactorily exercised without the assistance of the county road boards. Any hostility between the two boards would probably result in no progress being made in the county where such conditions might prevail.