

Opinion No. 13-1081

July 12, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Francis E. Lester, Secretary-Treasurer of the County Road Board, Mesilla Park, N. M.

COUNTY ROAD BOARD.

As to payment of warrants drawn by county road board.

OPINION

{*251} I have before me your letter of the 10th inst., which you handed to me at the office of the State Engineer. Ordinarily I feel compelled to refuse to give advice to any county officers as under the law the district attorneys are their legal advisers and are entirely independent of the Attorney General. In the present case, however, I understand that your district attorney has already given an opinion substantially in accord with my own view and therefore I write this letter, a carbon copy of which I will send to the district attorney for his information.

In your letter you say that at a regular meeting of your county road board on July 7, 1913, there were presented two bills in favor of yourself as secretary-treasurer of the board, for \$ 3.65 and \$ 28.85 respectively. Upon order of the board warrants for the payment of these bills were drawn and you enclose them for my information. They are numbered 125 and 131, and are signed by the chairman and secretary-treasurer of the road board and attested by the signature of the county clerk, and are addressed to the treasurer of Dona Ana county. You say that upon presentation to that officer payment was refused. You further say that payment of other like warrants has been refused for the reason noted upon some of them that the secretary-treasurer cannot draw funds.

You ask me to advise your board whether these warrants are properly drawn, and if not, in what respect they are defective, and if there is any good reason for the treasurer of the county to refuse payment.

I am at a loss to know any reason why the treasurer should refuse to pay these warrants. The statute creating your board in Section 7 thereof puts under the supervision and direction of the county road board the expenditure of all funds for road and bridge purposes and declares that the "methods for making such expenditures and accounting therefor shall be the same as those now or hereafter required by law in the case of expenditures made by the boards of county commissioners." These warrants appear to have been drawn in the same manner as warrants drawn by order of a board of county commissioners, and I can see no reason why payment should be refused any more than should payment of warrants drawn by order of the county commissioners.

The statement which you say has been made as to some warrants that the secretary-treasurer cannot draw funds, has no application. Such a reason might be made equally applicable to a warrant signed by the chairman of the board of county commissioners and the county clerk, and payable to the county clerk.

I have heretofore taken the view that the road funds should remain {*252} in the hands of the county treasurer and that the road board should draw warrants against it just as the county commissioners draw warrants and as these warrants now under consideration have been drawn, but I am somewhat impressed with the view which has been recently urged upon me that the general intent of the legislature as shown by the act creating the county road boards may have been that the road and bridge fund should be transferred from the county treasurer to the secretary-treasurer of the road board. If this is not so there would seem to be no reason whatever for requiring the secretary-treasurer of the road board to give a bond. As to this I am not yet prepared to give a final opinion and I speak of it at this time merely to show that I am not at present entirely satisfied with the position I have heretofore taken, and that I may feel compelled to change it if I become convinced that I have been mistaken.

I return the two warrants herewith.