

Opinion No. 13-986

February 10, 1913

BY: FRANK W. CLANCY, Attorney General

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

BRIDGES.

As to what body may contract for the construction of bridges.

OPINION

{*151} On the same day that I received it I began the preparation of an answer to your letter of the 7th instant in which you ask me who is the definite authority to contract, build and pay for the erection of a bridge in a county of the state of New Mexico. I started with the belief that the act of the legislature of June 10, 1912, which is printed as Chapter 54 of the Laws at that year, had effected a complete transfer of all powers and duties relating to the construction of bridges from the boards of county commissioners to the new county road boards; but before I had finished my letter to you, examination of earlier statutes made me very doubtful of the correctness of that position.

The act of 1912 gives the county road boards authority to construct or improve, or aid in constructing or improving, any road or bridge within the county, and provides that all funds for road and bridge purposes shall be expended under the supervision and direction of the county road board. I still believe that this legislation completely transferred the control of such work and the expenditure of money in the road fund to the county road boards, but the matter as to which there is doubt is as to any power to make contracts for bridges as provided for in Chapter 11 of the Laws of 1899, which has been amended in some matters of detail by Chapter 51 of the Laws of 1901, by Chapter 56 of the Laws of 1905, and by Chapters 8 and 56 of the Laws of 1909. The amendments do not change the general {*152} scope of the original act, which provides that the county commissioners shall advertise for bids for a proposed bridge when a petition signed by specified numbers of taxpayers is presented, and thereafter the county commissioners are to levy taxes to raise the money to pay for the bridge. If we can hold that the authority to receive such a petition, and make the contract, which is not at all clear, has been transferred to the county road board, the question of how the money shall be raised to pay for the bridge is still troublesome. The rule is general that no tax can be levied without distinct statutory authority, and no such authority appears to be given to a county road board. For county purposes the only tax-levying power known to our law is given to the board of county commissioners, and it would take definite and explicit legislative action to vest such a power in any other body. With the law in this condition it does not appear to me that any prudent bridge-builder would be willing to make a contract unless possibly he could get both boards to unite in all of the preliminary proceedings and in the making of the contract.

You also inquire whether the plans and specifications of any such proposed work must not be placed on file before the advertisement is made, referring to Section 23 of Chapter 124 of the Laws of 1905. I think that this is true where the bridge is to be paid for out of the ordinary road fund, and not from a special levy as provided for in the act of 1899. What I have heretofore said herein is based upon the idea of proceedings in accordance with the act of 1899, by which a petition is required and an advertisement "for bids and specifications, with plan or plans attached," to be followed by the levying of taxes to pay for the bridge. As to contracts for such work to be paid for out of the general road fund without any such levy of special taxes, I believe the county road board has full control and can make the contract, but I believe also that the county road board should follow the procedure laid down in said Section 23 of the Act of 1905.