

## Opinion No. 14-1157

February 6, 1914

**BY:** IRA L. GRIMSHAW, Assistant Attorney General

**TO:** Mr. John S. Baaven, Albuquerque, New Mexico.

### **ROADS.**

County is to be divided into three districts for road purposes.

### **OPINION**

{\*10} Because of the absence of Mr. Frank W. Clancy on business connected with the boundary litigation, your letter of the 4th inst. has been referred to me for attention.

Chapter 53 of the Laws of 1907 charges the county commissioners with the duty of dividing their county into not more than three road districts and to appoint a road overseer in each created district. The same chapter charges the commissioners with the apportioning of county road funds to each district.

Chapter 54 of the laws of 1912 abolishes road overseers and in their place and stead creates a county road board, the members of which are appointed by the State Highway Commission. The case of State vs. Byers, cited by you, held, in one respect, that the county commissioners were obligated by law to divide their counties into three rather than two districts. The determination of that question became necessary because the appellant contended that as the commissioners had divided their county into but two districts, the taxpayer would be obliged to perform labor in a section of the county where they could not be compelled to perform that labor had the commissioners complied with the statute, and the Court sustained that contention. The provision in the statute requiring this division of counties into road districts has not been repealed by any express provision of law in my judgment, therefore the duty still rests upon the board to make the district divisions, and this conclusion is strengthened by the case last cited.

In a case on appeal from San Miguel County we are contending that Section 7 of Chapter 54 of the laws of 1912 places absolute and unqualified control of county road funds in the hands of the county {\*11} road boards. We expect a decision in that case within the course of two months.

It is therefore my opinion that the commissioners must divide their districts. But you will immediately realize that such an action is useless and without any practical importance if the Supreme Court holds that the county road board has exclusive right to the possession of county road funds and to their mode of distribution and expenditure. If the Court so holds, then the county commissioners can make no apportionment of funds to

the various districts and their action in dividing the district must then amount to no importance whatever.

We will advise you of the Court's holding immediately after the decision is handed down. In the meantime let us know whether this opinion makes our meaning clear.