

Opinion No. 14-1167

March 10, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: A. J. Buck, Town Trustee, Alamogordo, New Mexico.

TAXES.

\$ 3.00 road tax collected by county road board cannot be expended within the limits of a city, town or village.

OPINION

{*24} I am in receipt of your letter of the 8th inst., asking for the opinion of this office as to whether the \$ 3.00 road tax can be expended within the limits of incorporated cities, towns and villages.

By the decision of the Supreme Court in State vs. Byers, et al., 134 Pac. 234, it would seem that the \$ 3.00 road tax cannot be expended in the municipalities above referred to. The Court, in its opinion, makes use of the following language:

{*25} "We are not unmindful of the fact that Section 2 of Chapter 124 of the laws of 1905 excepts highways, within the corporate limits of any incorporated city or town, from the public highways to be maintained and kept in repair by the counties in the manner provided by said act. It may seem unreasonable that the legislature intended to tax the residents of incorporated cities and towns for the maintenance of county roads, and at the same time provide that such cities and towns should depend upon their own resources to maintain the highways within their limits. We can only justify this apparent inconsistency upon the ground that the county roads are used by the people of our cities and towns as well as by the country people, and that both should contribute to the maintenance of such roads. The city or town highways are more largely used by the inhabitants of such places, and the burden of maintaining falls upon a larger number of people, and properly should be borne by those receiving almost all the benefit."

The Section 2 of Chapter 124 of the laws of 1905 referred to by the Court provides that all public highways **except** highways within the corporate limits of a city or town shall be maintained and kept in repair by the county, and by Section 2464 of the Compiled Laws of 1897, the city council is given the care, supervision and control of all public highways, bridges, streets, alleys, public squares and commons within the city, and shall cause the same to be kept open and in repair. It would thus seem that the \$ 3.00 road tax, which is collected by the county road board, cannot lawfully be expended by it within the limits of any incorporated city, town or village.