

Opinion No. 14-1227

May 11, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Howell Earnest, Traveling Auditor and Bank Examiner, Santa Fe, New Mexico.

COUNTY COMMISSIONERS.

County commissioners have discretionary power to use money arising from interest on deposits.

OPINION

{*87} I have before me your letter of the 9th inst. which was received on Saturday, enclosing correspondence with Dona Ana County officials relative to the handling of the "Interest on Deposits" fund, as to which you ask me for my opinion.

In the absence of any legislative provision as to what shall be done with money arising from the collection of interest on deposits made by a county treasurer, it would seem that the natural and proper method of dealing with that money would be to distribute it to the various funds, through the deposit of which the interest was received, but it does not seem to me that this would be practicable, as the amount of each of such funds on deposit would vary from day to day and from month to month to such an extent as to make such distribution impossible. This being so, the money appears to belong to the county treasury and ought to be made to serve some useful purpose. If not needed for county purposes the county commissioners might allow the fund to accumulate, as you suggest in your letter of April 30, to Mr. Cox, but I am of opinion that they are not compelled to do this on account of the absence of any specific statute on the subject. By the 5th Subdivision of Section 664 of the Compiled Laws of 1897, the county commissioners have power "to represent the county and have the care of county property and the management of the interests of the county in all cases where no other provision is made by law." It appears to me that this is one of the cases where no other provision is made by law and that in the control and use of this money arising from interest on deposits, the county commissioners have a discretionary power under the language above quoted.

I return the correspondence enclosed in your letter.