

Opinion No. 14-1270

July 10, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: Milton J. Helmick, Assistant District Attorney, Socorro, New Mexico.

ROAD TAX.

County road board has sole power to collect road tax within an incorporated city.

OPINION

{*130} I am just in receipt of your letter of the 9th inst. relative to the opinion of this office, dated July 3, 1914, and addressed, as I recollect, to the mayor of the village of Springer, New Mexico.

You ask if I meant to say in that opinion that the county road board has the sole power to collect the road tax within an incorporated city such as Socorro, and further if it is the opinion of this office that an incorporated city cannot collect the road tax.

In reply I have to say that it is the opinion of this office that an incorporated city can neither levy nor collect a road tax, but that under the decision of our Supreme Court in State vs. Byers, et al., 134 Pac. 234, the inhabitants of an incorporated city are subject to the payment of the county road tax, the collection of which is now placed in the hands of the county road board.

Nearly a year ago an attempt was made by the city authorities of Santa Fe to collect a \$ 3.00 road tax under a so-called city ordinance and a test case was instituted looking to the enforcement of such ordinance. The case never went to judgment, but was withdrawn, the city attorney, after having fully advised himself, evidently concluding that it would be a waste of time to proceed with the case. Upon this particular point I enclose to you herewith copy of a brief prepared by me which sets out the views of this office upon that subject.

So far as Section 2, Chapter 124, Laws of 1905, is concerned, I refer you to the language of the Supreme Court in the Byers case above cited.