

Opinion No. 14-1282

July 24, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable Alexander Read, District Attorney, Santa Fe, New Mexico.

STATE HIGHWAY BONDS.

As to contract between prospective purchasers of state highway bonds and boards of county commissioners.

OPINION

{*142} I have your letter of yesterday with which you inclose, for my consideration, a proposition submitted to the Board of County Commissioners of Santa Fe County by Messrs. Kelly & Kelly, as to which you ask my opinion at as early a date as possible whether or not there is any legal objection to prevent the Board from making such a contract.

The proposition mentioned has reference to the sale of the state highway bonds in the sum of \$ 500,000.00, and it is intended, as I understand, to promote and facilitate that sale by having the counties interested pay to Kelly & Kelly five per cent upon the amounts which will be apportioned to counties, as indicated by a letter from the State Engineer of July 17, addressed to Kelly & Kelly.

As is well known, this issue of bonds, bearing only four per cent interest, and required by the statute authorizing the issue, to be sold at par and accrued interest, cannot be sold in the ordinary way. To justify anyone in taking the bonds at par and accrued interest it is evident that some arrangement must be made by which the purchaser can be made safe, as these bonds are worth in the market less than par. To accomplish this purpose and to get the money for the State Highway Commission is evidently the object of the proposition made by Kelly & Kelly to the Board of County Commissioners.

I am of opinion that it is within the the power of the County Commissioners to make such arrangement under the broad general authority given in the fifth sub-division of Section 664 of the Compiled Laws of 1897, which reads as follows:

"To represent the county and have the care of the county property and the management of the interest of the county in all cases where no other provision is made by law."

As to whether the making of such a contract is a wise and judicious exercise of power, is a practical question to be decided by the County Commissioners themselves, and presents no question of law as to which you ask my opinion.

I call your attention to the fact that the form of contract as drawn might be construed to cover all of the money from the sale of all of the bonds which will, by the State Highway Commission, be made available for use in the County of Santa Fe, but the accompanying letter of Kelly & Kelly to the County Board shows that this is not the intention, as that letter asks for the payment of five per cent of the amount as set forth in the State Engineer's letter, which {*143} will be expended in the county. It might be well, however, to insert in the contract a definite statement that the five per cent asked shall not exceed the sum of \$ 1100.00, that being the percentage on \$ 22,000.00, which the State Engineer states will be available approximately for the County of Santa Fe.