

Opinion No. 14-1358

October 7, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Col. E. W. Dobson, Albuquerque, New Mexico.

ROADS.

As to special levy of five mills made by county commissioners in the building of a public road.

OPINION

{*219} I have received your letter of yesterday, asking my opinion as to the construction to be placed upon the proviso in Section 3 of {*220} Chapter 119 of the Laws of 1909, which provides that the County Commissioners of any county, desiring to co-operate with the territorial commission in the building of any public road, may cause a special levy of five mills upon each dollar of taxable property, the proceeds of which are subject to expenditure under the direction of the territorial commission.

You say that the question upon which you desire my opinion, is whether or not the County Commissioners could make a levy for an amount less than five mills, should they desire to co-operate with the state commission.

In effect, the question is whether the five mills mentioned in the statute, fixes a maximum beyond which the commissioners cannot go, but below which they may make the levy. I agree with you that this statute does not require the making of any levy at all, but that it is entirely optional with the commissioners as to what they will do, and if they should make a levy of less than five mills, I am unable to see how any tax-payer could complain, or successfully resist the collection of the tax. In other words, I believe that a levy of less than five mills would be perfectly valid.