

Opinion No. 15-1577

July 7, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Honorable O. N. Marron, State Treasurer, Santa Fe, New Mexico.

State Highway Commission may draw from state road fund all or any part of it, as it may see fit.

OPINION

{*154} I have before me your letter of even date herewith in which you say that the chances are that the State Highway Bonds will be sold today, and in the event that the sale takes place and the \$ 500,000.00, with accrued interest, are paid into the treasury, and the Treasurer causes the total amount so received to be placed in the State Road Fund, you desire to know if it is in the power of the State Highway Commission, upon warrant to the State Treasurer, to draw out the total amount received.

To answer this question requires, first, a consideration of the creation and nature of the Road Fund. Chapter 42 of the Laws of 1909 created the Territorial Roads Commission, and after stating the power and duties of that commission, by Section 8, authorized the Roads Commission to cause to be levied annually a tax of not to exceed one mill upon every dollar of property in the Territory, the proceeds of that tax "to be turned over to the Territorial Treasurer and to constitute what shall be known as the 'Road Fund' which fund shall be subject to the orders of the Roads Commission."

The Territorial Roads Commission, created by the act of 1909, is now the State Highway Commission, as will be seen by reference to Chapter 54 of the Laws of 1912, so that the Road Fund remains subject to the orders of the State Highway Commission.

The act authorizing the issuance of the Highway Bonds, which is Chapter 58 of the Laws of 1912, requires the Treasurer to pay into the State Treasury and cause to be placed in the State Road Fund the total amount received for the bonds, except such amount as may have been paid as accrued interest thereon. That this State Road Fund is the same fund as the one created by the act of 1909 is evidenced by the wording of the proviso in Section 4 of the act of 1912, which declares that the expenditure of the proceeds from the sale of the bonds shall be annually apportioned among the several counties upon the basis of the amount contributed by each county to the State Road Fund as proceeds of the one-mill levy provided for by Chapter 42 of the Laws of 1909. It thus appears that the State Road Fund is the same fund as the road fund created under the territorial government, and is still "subject to the orders of the Road Commission," or rather of its successor, the State Highway Commission.

With the statutes in this condition I am of opinion that there is no limit in amount of money to be drawn from the state treasury by the State Highway Commission, and that it may, if it sees fit to do so, draw out all of the money in the State Road Fund, or any part of it, as it may see fit to do. I am informed that this has been the practical construction put upon the statutes by the {*155} Highway Commission and by the Auditor and Treasurer, and that the State Highway Commission has been in the habit of drawing from the State Road Fund large sums of money, as it saw fit, later furnishing to the office of the State Auditor detailed accounts of the expenditure of the money.