

Opinion No. 15-1617 1/2

August 16, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Messrs. Otis & Company, 215 Cuyahoga Building, Cleveland, Ohio.

State highway bonds.

OPINION

{*189} The course pursued by Dillon, Thompson & Clay with regard to our highway bonds which you purchased is of such a futile and useless character that it is difficult to understand it. I know from former correspondence with Judge Dillon that if he were alive and giving attention to this matter that it would have been disposed of long ago, and I cannot resist the impression that some office boy is being permitted to handle it. I urge that you take the matter out of their hands entirely and submit it to lawyers of standing who would give it their personal attention. It looks as though someone in New Mexico, intent upon making mischief, has been sending worthless mis-information to them to which they are foolish enough to pay some attention. I have seen today a telegram from them to our State Treasurer which is as follows:

"O. N. Marron, On New York, Aug. 16, 1915. State Treasurer, Santa Fe, N.M.

Not satisfied as to litigation concerning highway bonds. We wish transcript mandamus suit to compel auditor Sargent to draw warrant to State Highway Commission for seventeen {*190} thousand seven hundred ninety-eight dollars decided by Supreme Court of New Mexico, July twenty-eight last, and all opinions delivered by Supreme Court in that suit. We also wish bill of complaint, answer, copy temporary injunction order and moving affidavits, in suit of John Clark against Hunker, Taubert and Delgado, San Miguel Highway Commission to enjoin using county money to pay discount on bonds, and full information concerning this suit whether brought in San Miguel County or elsewhere. We also wish advice whether any agreement exists to contribute money to pay discount, Attorney General's letter not satisfactory. If State's legal adviser not prepared to give opinion that sale is legal, our approval can scarcely be expected. We write.

Dillon, Thompson and Clay."

In the first place, there has been no litigation concerning the highway bonds except the case of Catron v. Marron, of which these people have been fully advised, and which was published long ago in Pacific Reporter and has no relation whatever to present matters.

The mandamus suit to compel the Auditor to draw a warrant in favor of the State Highway Commission does not relate to the highway bonds, although reference was made to them in the information for the mandamus and the decision will control as to the method to be adopted by the state officers as to what shall be done hereafter with the proceeds of the sale of the bonds when received by the state treasurer. The case has nothing whatever to do with the sale of the bonds, or anything connected with the sale, and Dillon, Thompson & Clay must know this to be the fact. That case does not concern them nor the sale of the highway bonds in the remotest possible way.

As to the suit of John Clark against the San Miguel County Road Board, that can have no effect whatever upon the sale of these bonds. The county road board was held, in effect, to have no power to make use of road money, which is the only money under its control, for any purpose except for the construction and maintenance of roads, but even if it had been permitted to make any different use of the money in connection with the sale of these bonds, that power could have had no effect upon the validity of the sale.

As to whether any agreement exists to contribute money to pay discount cannot, either, be of the slightest consequence to Dillon. Thompson & Clay. It is none of their business where the money comes from to pay for these bonds. That is your business and not theirs, as it could have no effect upon the validity of the sale. The State Treasurer will receive every cent of money for the whole issue of bonds and accrued interest thereon, and I suppose the longer that these gentlemen can delay the closing of the transaction the more money our Treasurer will receive on account of the accrued interest.

The last statement in the telegram that my letter is not satisfactory is quite characteristic of the whole performance by these gentlemen. What I wrote was that I had no reason to doubt that all proceedings were regularly taken, but that it was quite impossible for me to give the necessary time to make an examination of everything *{*191}* connected with the sale of the bonds, and that attorneys who were employed to examine as to the validity of a bond issue were the ones to express their opinion, and that I could not properly be called upon to perform their duties for them, and that I could not even get a copy of one of the bonds so that I could speak intelligently about them. I did say, however, as to the price, that I knew the price was in accordance with the requirement of the law.

I must say that you have not made a good choice of legal advisers who desire to substitute my opinion for theirs. You know, from your own wide experience in such matters, that if you once get these bonds properly executed, and with the ordinary recitals thereon as to compliance with the law, that nothing on earth will impair their value in the open market, or in any way open the door to their repudiation, or even to a suspicion of their validity, and it is difficult to understand why members of the bar of sufficient standing to be intrusted with anything of this kind, can perform as your lawyers are doing, especially when this must cause you some additional pecuniary responsibility.