

Opinion No. 15-1666

November 1, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Arthur Carr, Chama, New Mexico.

Failure of county commissioners to make special tax levy for school building.

OPINION

{*239} I have today received your letter of the 30th ult. relative to the levy of a special district tax in your school district under Section 6 of Chapter 79 of the Laws of 1915. You say that in your estimates submitted to the county superintendent, you included an estimate of about \$ 1,450 in addition to the amount on hand to be raised by the special levy for building, and that your estimates were approved by the county superintendent and that the county commissioners agreed to make the levy. You further say that you are now advised that while the commissioners, at the October meeting, made the general levy for the county, through inadvertence, they did not make your special levy, but would do so at their next meeting. You say that unless the levy is made as your estimate called for, the district will be unable to pay its bills and maintain its school, and, in substance, you ask what course to pursue if the levy is not made.

Any levy which the commissioners ought to have made but which they have failed to make, can still be made as the commissioners have not discharged their first duty in the way of making levies. I have no doubt that it is within their power still to make any proper levy which it was their duty to make.

Under the circumstances, I would suppose that the commissioners {*240} would still make this levy if it has been properly submitted to them, but if they should refuse, your remedy would be by way of mandamus from the district court to the county commissioners to compel them to levy the tax. Section 6 of the act, in mandatory language, makes it the positive duty of the county commissioners at the time of levying other taxes, to levy a tax upon the property within each district to pay for the purchase of a site or for the purchase of school houses or for the construction of school houses or for the full equipment of school houses, and a failure to perform that duty at the proper time will not prevent the performance of the duty at a later date.