

Opinion No. 16-1737

February 10, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Mr. E. M. Fenton, Jemez Springs, New Mexico.

As to the compensation of county surveyors.

OPINION

{*307} I have just received your letter of the 8th instant from which it appears that you, as county surveyor of Sandoval County, last year did work to the amount of \$ 566.00, which includes your own salary and various expenses which you have paid out of your own pocket. You further say that on the day you were writing, the county commissioners were about to make you a payment out of the general {*308} fund, but that you found a provision in the law which seems to prevent them from paying any indebtedness incurred during 1915, except from the taxes collected during that year, and you ask what means you have to secure your pay.

The statute to which you refer as preventing any payment out of the funds now on hand, must be that which is found in Section 1227 of the Codification. This is a part of what has been commonly known as the "Bateman Act," and, in substance it makes it unlawful for the county commissioners to contract any debts during any current year which, at the end of that year, cannot then be paid out of the money belonging to that current year, and any indebtedness which cannot be so paid is declared to be null and void, although that void indebtedness, by Section 1230, remains valid to the extent of receiving money, which may afterwards be collected, belonging to the current year in which the debt was contracted.

I am of opinion, however, that this provision, so far as it would interfere with the payment of salaries to county officers, is abrogated by Section 15 of Chapter 12 of the Laws of 1915, which is the act fixing salaries of county officers. By that act a county salary fund is created from which all salaries authorized by the act are to be paid quarterly, but said Section 15 reads as follows:

"Should the County Salary Fund at any time be insufficient to pay the salaries and expenses provided for to be paid therefrom, or any part thereof, the deficiency shall be paid from the Current Expense Fund, which fund shall be reimbursed to the extent of any deficiency so paid as soon thereafter as funds shall be available in the County Salary Fund."

This is the last expression of the legislature on this subject and so far as the payment of salaries of county officers is concerned, I think that is taken out from the effect of the earlier statute, and that whenever there is not enough money in the salary fund to pay

salaries, resort may then be had to the general county fund, subject to reimbursement when money comes into the county salary fund.

As to the survey of school districts, there has been no explicit change in the statute which limited the amount which the county should pay to \$ 50.00 per district. In June, 1913, a question was presented to me as to what should be done where the actual expenses of the survey exceeded the \$ 50.00, and I then expressed the opinion that the district itself might pay the additional amount where it was necessary to its welfare that it should be surveyed, under the very general authority given by Section 6 of Chapter 51 of the Laws of 1912, which reappears as Section 4943 of the Codification. The act of which this was a part, however, has been repealed by Section 11 of Chapter 79 of the Laws of 1915. A somewhat similar power is given to the school directors, however, in the second paragraph of Section 3 of the same act, and if we are to conclude that the \$ 50.00 limitation is still in force, I believe it would be still proper for the school directors to pay what might be necessary above the \$ 50.00, the \$ 50.00 being paid by the county. In the opinion which I gave in 1913, above referred to, I said that even without the provision in Section {*309} 6 of Chapter 51 of the Laws of 1912, I thought that such a payment by the district would be justifiable.

I am of opinion, however, that if the county commissioners direct the county surveyor to make such surveys, that he would be entitled to compensation as provided in Chapter 12 of the Laws of 1915, but that such work would then be considered as a part of the work, the limit of compensation for which is fixed in the county salary law.