

## Opinion No. 16-1827

June 17, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. A. R. Moses, County Surveyor, Tucumcari, New Mexico.

**Bill of county surveyor for survey of a proposed road should be presented to county commissioners.**

### OPINION

{\*390} I have today received your letter of the 15th instant in which you say that by direction of the board of county commissioners you have just finished the survey of a proposed road, and you ask for advice as to how or to whom to make claim for compensation. You say that the County Clerk is of opinion that all matters of claims pertaining to roads must be presented to the County Road Board, but you say that you have not read any law to that effect, and you also desire to know the rate of compensation to which you are entitled for such work done for the county, and what is allowable to chainmen and flagmen as assistants in the work.

Under the direction contained in Section 1 of Article X of the Constitution the legislature of 1915, by a statute which is published as Chapter 12 of the laws of that year, fixed the annual compensation of county officers, and declared that the surveyor should be entitled to \$ 10.00 per day, and in the class of counties to which yours belongs, he would not receive pay for more than 150 days in the year. As to whether there must be paid, in addition to the \$ 10.00, expenses of assistants, transportation, etc., is now somewhat uncertain in view of what I understand has been decided by Judge Reynolds, of Albuquerque. I am told that he held that the {\*391} \$ 10.00 must cover, not only the services of the surveyor, but all of his expenses. I have been of a different opinion, and have so advised several county surveyors. I hope that the county surveyor at Albuquerque will appeal his case so that we can have a definite adjudication by the Supreme Court which will be applicable everywhere. I still believe that the \$ 10.00 should be considered as the compensation for the surveyor, as I am sure that it would be very difficult to get competent surveyors to do such work for the counties at \$ 10.00 a day with no allowance for other expenses. You will notice that the section of the Constitution above referred to declares that no county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law.

The statute under which your County Clerk has formed his opinion that such accounts must be presented to the county road board will be found in Sections 2646 to 2651 of the Codification, and if this were the only statute on the subject, his opinion would undoubtedly be correct, in view of the clear language of Section 2647, which provides, in substance, that all road and bridge funds shall be expended under the supervision and direction of the county road board. This statute has been passed upon by the

Supreme Court of the State in the case of State v. Romero, 19 N.M. 1, and the court held that while this statute authorized the county road board to draw warrants upon the county treasurers against the county road fund, yet as to the provision which you will find in the next article of the Codification, as to the acquisition of land for road purposes, the authority still remains with the county commissioners to draw warrants against the county road fund to pay for such land. This power must also include the authority to appoint viewers and to pay all expenses in connection with the work of the viewers, or surveyor. It is, therefore, my opinion, based on that decision of the Supreme Court, that your claims for services of the kind described in your letter should be presented to the county commissioners for allowance and payment.