

Opinion No. 16-1829

June 17, 1916

BY: FRANK W. CLANCY, Attorney General

TO: Messrs. Young & Young, Las Cruces, New Mexico.

Suits to recover road tax should be in the name of the state.

OPINION

{*391} I have your letter of yesterday asking my opinion as to whether or not the county road board is authorized to bring suits for the recovery of the road tax from persons who have refused to pay, or to perform the labor provided by statute. You call attention to the defective condition of the statutes which show that the county road board is not given the power to sue, and you, therefore, desire to know who would be a proper plaintiff to bring the suit provided for in Section 2678 of the Codification.

{*392} That section requires the county road board to make a list of the delinquents, but it does not say what shall be done with the list after it is made. It merely provides that the taxes shall be recovered in a separate action for each delinquent.

I am of opinion that the district attorney is the proper person to bring any such suit, in view of the first sub-division of Section 1859, which makes it his duty to prosecute and defend for the state in all courts of record in all cases, criminal or civil, in which the state or any county may be a party or may be interested or concerned, and of the further provision in Section 1861 that he may appear and represent any county, or the state in any matter before the courts of justices of the peace. I believe, also, that the suit should be brought in the name of the state, as it would be an action to recover a tax imposed by the legislative department of the state. You will notice that a prosecution under this statute was brought in the name of the state against F. W. Byers, reported in 18 N.M. 92, and without any objection.