

Opinion No. 17-2033

July 31, 1917

BY: HARRY L. PATTON, Attorney General

TO: Hon. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Road Tax Must Be Paid into the County Treasury and Cannot Be Expended by Private Corporations

OPINION

I am in receipt of your recent letter in which you state that in the audit of the County Road Board of Colfax County, it is disclosed that two of the large operating companies in said county, the Stag Canon Fuel Company and the St. Louis, Rocky Mountain and Pacific Company, have had an agreement with the old Road Board and have been pursuing the policy of collecting road taxes from their employes and using the money so collected where and when they pleased on their own initiative and without supervision or control by the Road Board, making out vouchers therefor, and holding such moneys so collected in order to make their vouchers good.

Section 2674, Codification of 1915, provides for the collection of a poll tax for road purposes of \$ 3.00 from able-bodied men between the ages of twenty-one and sixty years. The section referred to provides:

"and all moneys collected and received by any such board shall be by it paid into the county treasury to the credit of the road fund for the district within which said money was collected, and all moneys paid out for work upon roads or for tools, supplies, materials or repairs, shall be paid by an order signed by the board upon the county treasurer to be paid out of the road funds."

The meaning of this section is clear and there is no doubt in my mind but that the course adopted by these two companies as stated by you, is in violation of the provisions of the statute referred to.

I recommend that steps be taken to compel these companies to pay into the county treasury all moneys collected for this purpose, and that the same be disbursed in the manner provided for by said act.