

## Opinion No. 37-1732

August 7, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. John C. Gatlin, District Agent Bureau of Biological Survey 402 Federal Building Albuquerque, New Mexico

{\*148} Following my conversation with you on August 5th I have just received your letter, together with exhibits in connection with failure to make assessments against lands because of use of materials in rodent control operations.

Chapter 119 of the Session Laws of 1919 is the statute involved and provides for cooperation between the State of New Mexico and the Bureau of Biological Survey in destroying predatory animals and rodent pests.

The New Mexico College of Agriculture and Mechanic Arts is authorized and directed to execute a cooperative agreement with the Secretary of Agriculture or the Bureau of Biological Survey for the carrying on of such cooperative work.

Rodent pest repression may be carried on upon privately owned lands by voluntary cooperation of the land owners with the Bureau of Biological Survey. These land owners may arrange with the State Rodent Inspector or Assistant of the Biological Survey for the destruction of rodents on their lands under written agreement.

Provision for reimbursement to the state for actual cost is made. Such reimbursement is to be paid into the State Treasury within thirty days after preparation of an itemized account and if not so paid same shall be a lien upon the land.

The State Rodent Inspector is required to keep an itemized account of the actual expense of material, labor, necessary travel and other expense in connection with destroying rodent pests upon such lands under such cooperative agreement.

It is further provided in Section 4 of said Act that if the owner shall fail to pay the charges within thirty days after notice to him in person or by mail to his last known post office address then the amount of same, not exceeding ten cents per acre, shall be certified to the County Assessor as provided by statute.

It then becomes the duty of the County Commissioners of the county at the time and in the manner for levying other taxes to make a special levy upon the lands described sufficient to pay the amount of such expenses not exceeding ten cents per acre, together with a penalty of five per cent and interest at the rate of one per centum per month from the {\*149} date of such certificate. This tax is then to be entered upon the assessment roll assessed against the owners of said lands and shall be collected at the

time and in the manner provided for collection of other taxes. It is then transmitted to the State Treasurer and credited to the State Rodent Pest Fund.

I understand that the Board of County Commissioners have refused to make this levy for the reason that the work done at the particular instance was not effective. There is nothing in the law touching this matter. It is the work itself for which payment is to be made and such payment is not contingent upon the successful outcome of the work and it is my belief that the Board of County Commissioners have no concern with this question.

It is my opinion that upon proper certification of the account to the Assessor that the County Commissioners should then take recognition of the matter and at the proper time make the proper special levy.

I am sending a copy of this letter to the District Attorney, Mr. V. A. Doggett, Raton, New Mexico, who, under the law, is the legal advisor for the Board of County Commissioners of Colfax County.