

Opinion No. 4483-0A

March 17, 1944

BY: EDWARD P. CHASE, Attorney General

TO: J. W. Branson, Dean, New Mexico College of Agriculture and Mechanic Arts, State College, New Mexico

We are in receipt of your letter of March 15, 1944, in which you ask our opinion as to the meaning of the phrase "secondary roads" as used in Chapter 125 of the Session Laws of 1939.

Nowhere in our statutes does a definition of this term appear, nor do the decided cases establish any definite meaning of this term. Thus, as the County Commissioners are given the authority to spend the Taylor Grazing Funds in the construction and maintenance of secondary roads, the discretion as to what are secondary roads is necessarily relegated to their discretion. The only limitation on their discretion, other than the approval of the President of the State College, or his agent, is that they could only spend these funds for roads under their jurisdiction.

By Section 58-229, the State Highway Commission is given jurisdiction over all roads that have been declared State Highways by the State Highway Commission or the State Legislature.

By Section 58-301, the County Commissioners are given general control and general management of all roads and highways that have not been declared to be State highways.

In view of the foregoing, it is my opinion that as a practical matter all roads and highways within a county that are not State highways may, in the discretion of the County Commissioners, be declared to be secondary roads.

By ROBERT W. WARD,

Asst. Atty. General