

Opinion No. 612

**County Commissioners, Power of
—Budget—Highways—Emergency.**

HELD: The building or repair of a road may constitute an emergency within the scope of Section 6, Chapter 148, Laws of 1929, but whether an emergency exists is a question of fact which the county commissioners alone have the right to determine.

September 14, 1934.

You have requested me to give you an opinion on the question whether the county commissioners may declare an emergency as provided by Section 6, Chapter 148, Laws of 1929, in order to build a road between Nashua and

the Fort Peck Dam, the budget of the county not providing for the same.

It is my opinion that the construction or repair of a public road may be within the powers of the county commissioners as given by the said emergency clause of said Chapter, providing the county commissioners find as a fact that an emergency exists.

As to whether an emergency exists, that is a question of fact which the county commissioners have the sole right to determine after notice and hearing, as provided by law, and this office would not presume to usurp the functions of the county commissioners even if we were competent to pass upon the facts. The county commissioners, having the opportunity of personal investigation of the needs as well as inspection of the premises, and of conducting a public hearing at which any taxpayer may appear and be heard for or against the expenditure of money for such emergency, may well determine the facts which may or may not constitute an emergency which could not have been foreseen at the time of making the budget.

As stated above, if they find that such emergency exists, it is my opinion that the power to act may be found in said Section 6, Chapter 148, Laws of 1929.