

Opinion No. 58-111

June 2, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Georgia L. Lusk, Superintendent of Public Instruction, Santa Fe. New Mexico

QUESTION

QUESTION

1. May the income from an oil well, donated to the Hobbs Municipal School District, be deposited in a special account?
2. If so, how should the account be designated?
3. Can income from the well be spent for maintenance, operation, etc., of the well?
4. Can income from well be spent for other purposes, including direct charge budget purposes?

CONCLUSIONS

1. Yes.
2. Designation should be as directed by the Public School Finance Division.
3. Yes, after budget approval under Ch. 249, Laws 1957.
4. Yes. See Opinion.

OPINION

ANALYSIS

There is, of course, no doubt in regard to the power of the Hobbs Municipal School Board in accepting the oil well as an unconditional gift. § 73-8-1, N.M.S.A., 1953 Compilation. Since, however, the gift is one requiring the expenditure of funds to operate it in a prudent manner, and giving § 73-8-1 the liberal construction to be accorded it, we hold income from the well may be expended toward operation, maintenance, etc., of the well in accordance with the custom and usage of oil well operators. This becomes clearer when we remember the gift was not only of the well,

but of all future income traceable to the well. Your third question is answered in the affirmative.

Because of our holding that future income from the well is also a gift, and because said income may be expended for operation and maintenance of the well, we believe the income should be deposited in a special account.

We hesitate to give a categorical answer to your second question because of § 73-3-6, N.M.S.A., 1953 Comp., 1957 Supp., vesting considerable discretion in the Public School Finance Division, Department of Finance and Administration, over a uniform system of school district accounts. We suggest you consult the appropriate officers in charge of said agency to ascertain how to designate the account.

We know of no provision of law which would preclude the district from spending well income for direct charge budget purposes. However, the expenditure must be made pursuant to Chapter 249, Laws of 1957. Those purposes are specified in § 73-7-6, N.M.S.A., 1953 Compilation. The same is true of expenditure of said income for maintenance budget purposes as specified in § 73-7-3, N.M.S.A., 1953 Comp., 1957 Supp. Of some possible interest are §§ 73-7-4 and 73-3-9 (p.s.) relating to transfers and increases.