

## Opinion No. 13-1043

May 15, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. Alvan N. White, State Superintendent of Public Instruction, Santa Fe, N. M.

### **SCHOOLS.**

State Superintendent may not receive moneys from the rental, sale or lease of common school lands.

### **OPINION**

{\*209} Your letter of April 9th has been on my desk for more than a month, and I have made every effort possible to try to convince myself that your department could continue to receive for necessary and important expenses, from the rental, sale or lease of common school lands, moneys heretofore appropriated by the legislature, but without success. Those various appropriations referred to in your letter were made by the territorial legislatures, and it was undoubtedly within the legislative power to use money derived from the management of the common school lands for such school purposes, but I cannot avoid the conclusion that Section 4 of Article XII of the Constitution, to which you call attention, has destroyed any such power in the legislature. That section of the constitution is the one which declares what shall constitute the current school fund of the state, and among the things which constitute that fund are "the rentals of all school lands and other lands granted to the state, the disposition {\*210} of which is not otherwise provided for by the terms of the grant or by act of congress." It is then further declared that the current school fund, not a part but the whole of it, shall be distributed among the school districts of the state in the proportion that the number of children of school age in each district bears to the total number of such children in the state. This is subject to but one limitation or reservation, and that is for the taking from the current school fund of a sufficient reserve to be distributed among school districts where necessary for the maintaining of a school for the full period of five months in the year. The legislature clearly took this view of its powers in the enactment of Chapter 51 of the Laws of 1912, and provided for the crediting of one-half of the current school fund at four different times in the year to the reserve fund for the maintaining of schools for the period of five months and for an apportionment by the state superintendent of the money in the current school fund in accordance with the requirement of the constitution. There is no intimation in this statute any more than there is in the constitution that a single dollar of the current school fund can be used for any other purposes or in any other way.

I regret very much being compelled to reach this conclusion and will be glad to revise it if you can suggest to me any reason for so doing. If there is anything pertinent to the question which I have overlooked, I hope you will call it to my attention, as I fully

appreciate how your department will be hampered and crippled without the money which it ought to have to meet the various expenses referred to in your letter.