

Opinion No. 13-1034

May 3, 1913

BY: FRANK W. CLANCY, Attorney General

TO: W. G. Sargent, State Auditor, Santa Fe, New Mexico.

APPROPRIATIONS

Deficiency appropriations in Sec. 9, Chap. 83, Laws of 1913, may be paid from road fund and game protection fund.

OPINION

{*199} Your letter of the 18th inst., was duly received, but has not been sooner answered because we have had several conferences about the matter to which it relates and it did not seem urgent, or indeed certain that an answer should be required. It seems to me, however, that I ought to make some response to it.

In that letter you ask my opinion as to whether certain deficiency items, for which appropriations are made in Section 9 of the last appropriation bill, which appears on pages 132 and 133 of the printed laws, can be properly paid out of the "Road Fund" or the "Reserve School Fund" or "Game Protection Fund." The legislature having directed that those items should "be paid from any funds in the state treasury, except for interest on the public debt," that legislative direction must be considered as sufficient to authorize you to pay the items in question from any fund created by the legislature, except the interest fund, as the legislature has full control over all such funds, and is in no way hampered by previous legislation, unless to disregard it would have the effect of impairing the obligation of some contract, which is forbidden by the Constitution of the United States. Bearing this in mind, it seems clear that the legislative direction would certainly reach the road fund and the game protection fund, both of which have been created by the legislature, but it is not so plain as to the reserve school fund, because that fund is one practically created by Section 4 of Article XII of the Constitution, and is made up, in part at least, from the rentals of school lands and the income from the permanent school fund, neither of which is created by the legislature but by Congress and the Constitution. The Constitution distinctly declares what should be done with the reserve fund, and I am of opinion that the legislature has no authority to divert it to any other purpose, unless possibly there should be a surplus after that purpose was fully accomplished and so much of the reserve fund as might be needed is distributed among school districts to enable them to hold school for the full period of five months.