

Opinion No. 13-1082 1/2

July 23, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. George L. Brooks, Albuquerque, New Mexico.

UNIVERSITY OF NEW MEXICO.

As to disposition of moneys received by the University of New Mexico.

OPINION

{*253} I have today received your letter of yesterday enclosing another from Mr. Bickley to you on the subject of the investment of University money arising from the sale of lands. You ask me, in substance, to examine his letter and to point out to you where, in my judgment, he is in error.

Mr. Bickley's letter is carefully prepared, and has sufficient effect on my mind to incline me to modify, to some extent, for the present at least, the opinion which I recently expressed to you. I wrote you that I had no doubt that any money received from sales of University lands or any money received from leased lands, or for the price of timber cut could be used for the purchase of lands for the use of the University. It is as to the first of these three items that Mr. Bickley's letter raises doubt in my mind.

He calls attention to the fact that in Section 10 of the Enabling Act it is provided that a separate fund shall be established for each of the objects for which the grants of land are made or confirmed, and that the state treasurer shall keep the moneys invested in interest bearing securities, to be approved by the Governor and Secretary of State, and he infers from this last provision that permanent funds are contemplated, the income only of which can be used. I am not entirely sure about this, as the language may be susceptible of the construction that all such moneys shall be invested in interest bearing securities only until such time as the money is needed for the purposes for which the lands were donated.

However that may be, I still have no hesitation in saying that the income from leased lands, or from payments for timber cut, can be used for the purchase of lands, or for any other proper purpose connected with the maintenance and operation of the University and, practically, I understand that at the present time these are the sources from which you hope to have the money with which to purchase needed lands.

I think that I made the broad statement which I did in my former letter, because I had in mind the provisions of Section 10 of the Act of Congress of June 21, 1898, which, on this point, stated that the money received on account of sales of lands should be placed to the credit of separate funds for the respective purposes named in the act and should

be used only as the Legislative Assembly of the Territory {*254} might direct. There is no word in that Act from which any inference could be drawn that there was an intention to create permanent funds, the income only of which could be used.

I do not find in the provisions of the statute creating the office of Commissioner of Public Lands anything which strongly supports the view that our legislature intended to create such permanent funds, the income only of which should be used, although it is true that Section 78 thereof does create several permanent funds.

This question cannot, however, be of any great immediate practical importance, as there never has been, until very recently, any University lands sold. I am informed that five and one-half sections have been sold at \$ 3.00 per acre, of which ten per cent will be immediately paid, the remainder of the payments extending over a period of thirty years.

It might be suggested, as to the money received for timber cut, that it comes from a sale of the realty and this would be in harmony with the ancient doctrine of the common law that trees are a part of the real estate. I believe that we can successfully maintain that this doctrine is not applicable to our present condition and that the sale of the timber is not a sale of the land but of a crop which has matured on the land and must be regarded as personal property. This question was very elaborately argued before Judge Abbott in the injunction case against the American Lumber Company and Clark Carr, and he refused to hold, as a matter of law, that the sale of trees was a sale of the real estate and said, in substance, in an opinion that whether such a sale should be considered a sale of real or personal property might depend upon the circumstances of the particular case.

I return, as requested, Mr. Bickley's letter.