Opinion No. 13-1126

October 23, 1913

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: Honorable W. G. Sargent, State Auditor, Santa Fe, N. M.

UNIVERSITY AND AGRICULTURAL COLLEGE.

Moneys derived from lands granted by act of Congress of June 21. 1898, to University and Agricultural College, may be used by those institutions the same as are the funds of other institutions.

OPINION

*{*308}* After further consideration of the matters treated of in my letter of the 13th inst. to you, I find myself compelled to modify the views therein expressed, as to the use of funds derived from the lands granted by the third section of the act of Congress of June 21, 1898, for the University and Agricultural College.

I am now of opinion that all moneys derived from those lands, whether from sales, leases or interest upon investments of the proceeds of said lands, are subject to use by those institutions under our own statutes, the same as are the funds of other institutions.

I am led to this conclusion by a broad consideration of the general intent and purpose of the act of Congress of June 20, 1910, commonly called the Enabling Act, without close and minute attention to the exact wording of the two acts of Congress.

It seems clear that Congress by the latter act intended to cover the whole subject of the management, control and disposal of all lands donated to the territory and confirmed to the state, as well as the lands newly granted, so that we are not required to look back of the act of 1910 for anything relating to these subjects. It is a well settled rule of construction that where the legislature enacts a statute clearly intended to cover the whole subject of which it treats, all anecedent legislation on the same subject is displaced, although there may be no specific repeal or even any distinct inconsistency between the earlier legislation and the new statute.

The act of 1910 treats generally of the manner of leasing and selling the lands donated and of what shall be done with the proceeds arising from the lands, but with one single exception there is not a word to indicate that the income alone from any of the funds can be used or that the principal shall be preserved intact. With that single exception, the disposition of all moneys arising from the lands is left to our legislature. That exception is as to the permanent school fund. As to this fund, it is provided in Section 7 that any surplus of the million acres of land granted for the payment of the debts of Grant and Santa Fe Counties shall become a part of the permanent school fund, of

which the income only is to be used for the maintenance of the common schools; and by Section 9, it is provided that five per centum of the proceeds of sales of land by the United States shall be paid to the state as a permanent inviolable fund, the interest of which only can be expended for the support of the common schools. The fact that Congress makes these specific provisions as to parts of the permanent school fund and makes no like *{*309}* provision as to other funds, evidences an intent to leave the disposition of all other funds to the legislature. This view is strongly corroborated by Section 1 of Article XIII of the Constitution, to which reference was made in my former letter, and which provides that the lands granted the state are public lands "to be held or disposed of as may be provided by law for the purposes for which granted." As this provision, with all the rest of the Constitution, was submitted to, and approved by, Congress, it would, as I now view the matter, supersede and take the place of any different proposition in either of the acts of Congress with which it may in any way be inconsistent. We are certainly not required to look beyond what is to be found in our own Constitution as a guide to the meaning and validity of our local legislation. The fact that the statutes we have been considering were enacted by the territory cannot affect our consideration in any way. By Section 4 of Article XXII of the Constitution, all laws of the territory not inconsistent with the Constitution remain in force as the laws of the state until they expire, or are altered or repealed, and such legislation as is to be found in Section 3636 of the Compiled Laws of 1897 and Chapter 72 of the Laws of 1905 is to be considered as in force because not inconsistent with the Constitution and must be judged of the same as though it had been acted by the state legislature.