

Opinion No. 13-1121

October 13, 1913

BY: IRA L. GRIMSHAW, Assistant Attorney General

TO: Honorable William G. Sargent, Auditor of New Mexico, Santa Fe, New Mexico.

STATE INSTITUTIONS.

Auditor's right to pay moneys to different state institutions.

OPINION

{*298} We have your letter of September 22nd, requesting opinion as to your right to pay to the various institutions of the state moneys standing to their credit. Because it became necessary to thoroughly investigate all the law on the subject the answer to that letter has been somewhat delayed.

Without minutely setting out the methods of our construction it is sufficient to set out the names of the institutions to whom lands were granted, number of acres granted and the rights to disposition of said lands and funds.

A. To University, two townships in quantity and all saline lands, with power to lease, the proceeds therefrom to be used as the legislature may direct; also with power to sell, the proceeds therefrom to constitute a permanent fund; the income being subject to use by legislative direction.

{*299} B. To University, sixty-five thousand acres of land, with right to sell the same, the proceeds thereof to constitute permanent funds to be safely invested and the income only subject to use.

C. To Agricultural School, granted one hundred thousand acres, with right to sell the same, the proceeds thereof to constitute permanent funds to be safely invested and the income only subject to use.

D. 1. For the establishment of water reservoirs for irrigating purposes, 500,000 acres.

2. Improvement of Rio Grande, 100,000 acres.

E. Asylum for the Insane, 50,000 acres.

F. School of Mines, 50,000 acres.

G. Asylum for Deaf and Dumb, 50,000 acres.

H. Reform School, 50,000 acres.

I. Normal Schools, 100,000 acres.

J. Institution for Blind, 50,000 acres.

K. Miner's Hospital, 50,000 acres.

L. Military Institute, 50,000 acres.

M. Penitentiary, 50,000 acres.

Lands granted to the various institutions beginning with "e" and including "m," with right to sell, the proceeds of which may be used as the legislature may direct.

This act remained in full force and effect without any modification whatever until the passage of the Enabling Act which, as hereinafter shown, somewhat qualifies certain parts of the acts of 1898.

In 1889, the legislature of New Mexico passed an act (Section 3636, C. L. 1897) which substantially provided that whenever there should be any funds to the credit of the Agricultural School, University, School of Mines and the Asylum for the Insane deemed sufficient to commence the erection of any necessary buildings or improvements, or pay the running expenses or other expenses of such institutions, the Auditor, on request, should draw a warrant for those moneys.

By Section 70 of that act (Sec. 3647, C. L. 1897) the legislature anticipated the grant of lands to these institutions by Congress at a subsequent time.

The Act of 1889 was valid and applicable to the funds belonging to the University, derived from the leasing of the two townships and the income from the funds derived by a sale thereof, together with moneys derived from lease of saline lands, together with income derived from the proceeds of the sale of the 65,000 acres granted the University. It was also valid as to the income derived from the proceeds of the sale of the 100,000 acres granted the Agricultural School, as well as all moneys derived from the sale of lands granted to the Asylum for the Insane and the School of Mines. It applied to no other territorial funds or institutions.

In 1905 the Legislature of New Mexico, by Chapter 72 of the Session Laws of that year, provided that the New Mexico School of Agriculture and Mechanical Arts and "all other territorial, educational and charitable institutions in New Mexico" are authorized to expend their funds derived from the sale and lease of lands for buildings, equipment and other permanent improvements, and that the respective Board of Regents are authorized to draw the same.

The act was valid in reference to moneys derived from the leasing {300} of the two townships and the saline lands reserved to the University and also to the proceeds of the sale of the lands which were granted by the said Act of Congress to the following institutions: Insane Asylum, School of Mines, Deaf and Dumb School, New Mexico Reform School, Normal Schools, Institution for the Blind, Miner's Hospital, Military Institute, and the Penitentiary, but was invalid and of no legal consequence or effect as to the moneys derived from the sale of the two townships in quantity and the 65,000 acres granted to the University and as to the sale of the 100,000 acres granted to the Agricultural School, for the proceeds therefrom, under the Act of Congress of 1898 were made to constitute permanent funds and were not subject to legislative action by the Territory of New Mexico.

The Act of 1905, however, cannot be said to include moneys derived from the sale of lands for the establishment of permanent water reservoirs for irrigation purposes, or for the improvement of the Rio Grande River in New Mexico, because they are not included within the definition of the word "institution."

In 1910 the Enabling Act for New Mexico was passed. Among other things it granted the following lands: To the University 200,000; it also repealed the saline grant theretofore made; to the Agricultural School 150,000 acres; Asylum for Insane 100,000; School of Mines 150,000; Deaf, Dumb and Blind Schools 100,000; Miner's Hospital 50,000; Military Institute 100,000; Penitentiary 100,000; Public Buildings 100,000, and charitable, penal and reformatory institutions 100,000 acres.

The act further provided: (Annotated Constitution):

Sec. 354. "That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to said territory, are hereby expressly transferred and confirmed to the said State, and shall be by the said State held in trust, to be disposed of in whole or in part only in the manner and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any said lands shall be subject to the same trusts as the lands producing the same."

Sec. 355. "Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than that for which such particular lands, or lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust."

It will be noted that Section 354 does not affect the specific question of funds from proceeds derived from the sales of lands granted in the Act of 1898, because the word "manner" used in said section refers to the subsequent sections appearing in the act and intends to provide a uniform system in reference to mortgaging, selling, leasing, selling of timber, auctioning, advertising, appraising, disposing on credit, minimum price and matters referring to reclamation and water power projects, and has no reference

whatever to the disposition of the funds. Therefore it cannot be said to affect the mandates of the act of 1898, providing for the disposition of the proceeds.

Section 355 likewise does not directly change the situation. It, however, does refer to the lands granted under the Act of 1898, as well {301} as the act wherein it is one section. The words "such lands," by reference back to Section 354 means "all lands hereby granted, including those which have been heretofore granted to said territory." The word "object" in Section 355 has direct reference to the institutions like the University, School of Mines, Agricultural School, etc., nor do the words "or in any manner contrary to the provisions of this act" materially change the situation, for that provision does not exclude the consideration of the other grants and limitations thereon.

Sections 369 and 371 are in words and figures following, to-wit:

"Sec. 369. A separate fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such moneys were by this act conveyed or confirmed."

"Sec. 371. The state treasurer shall keep all such moneys invested in safe interest-bearing securities, which securities shall be approved by the governor and secretary of state of said proposed State, and shall at all times be under a good and sufficient bond or bonds conditioned for the faithful performance of his duties in regard thereto as defined by this act and the laws of the State not in conflict herewith."

The words "any of said land" in Section 369 by reference back means the lands granted under the Act of 1898 and under the Enabling Act. The word "objects" has the same meaning as heretofore in the preceding paragraph stated.

The words "all such moneys" in Section 371 by reference back refers to the moneys derived from all the lands granted under the act of 1898 and the Enabling Act, and includes moneys derived from any course. Therefore, there is no serious conflict between the different provisions of the two congressional acts. The latter act makes it compulsory to sell all lands in the manner therein outlined and declares what shall constitute a breach of trust. If there is room for any serious controversy as to the conflict, it would be as between Section 371 of the Enabling Act, providing that the treasurer shall keep all "such moneys invested in interest-bearing securities," and the various provisions of the Act of 1898, providing that certain moneys may be used by direction of the legislature. For illustration, the Act of 1898 provides that the moneys derived from the sales of lands belonging to all other institutions other than those from reserved lands of the University and common schools "shall be used only as the legislative assembly of said Territory may direct." It also provides that the proceeds from the leasing of lands reserved to the University may be used by direction of the legislature.

Now, the Enabling Act provides that five per cent of the proceeds of sales of public lands, which shall be sold by the United States subsequent to the admission of New Mexico as a state, shall be paid to the state and constitute a "permanent inviolable fund, the interest only of which shall be expended." Within both acts this is the only section which professes to so place the principal funds that they shall not be used by direction of the state through its legislature. If the section of the Enabling Act, providing all such moneys shall be kept invested {*302} by the treasurer, be given its literal meaning and affect and force, it would have the effect of an absolute repeal of those provisions heretofore cited in the Act of 1898, whereas one is immediately struck with the fact that nothing in the Enabling Act tends to impress one that there was an intention in anywise to repeal by implication the provisions of the former act. The main purpose of these grants of lands, to financially aid the various institutions of the State would be entirely swept away so far as a use of the principal was concerned. The interest accumulations are infinitesimally small compared with the principal. The principal sums would be constantly accumulating by bounds and while the interest, it is true, would be proportionately increasing in like ratio, the interest would not serve the purpose of giving the financial aid intended by the grant. Also it is hard to believe that Congress would intend a literal translation of the said section providing for the investment of all funds without linking such provision with words conveying a meaning that all the moneys were to constitute an inviolable fund. If New Mexico were fit to be entrusted with the use of this money as a territory, it would be doubly so as a state. The policy of the United States in the first instance was to give the Territorial Legislature power to provide for the disposition of most all of these moneys and I can see nothing in the Enabling Act to over-ride that policy. No condition existed for a change of such policy. The rights of the Federal Government are as secure under the administration of the state government as under our former territorial government, for the grant in toto is a trust grant.

The meaning of that section providing for the investment of the moneys derived from said lands simply means all moneys derived from said lands which have not been otherwise diverted by legislative enactment -- to prevent the money lying idle and dormant, and it seems that the courts would decide the question in that light. Otherwise the court would have to say that the latter provision impliedly repeals all those former provisions without the slightest direct reference to them, and although the latter act referred to the effect of certain provisions of the former act in qualification and limitation thereof.

Assuming that this money is subject to legislative diversion, the effect is as follows:

The Act of 1889 (Section 3636, C. L. 1897) providing that the School of Mines, University, Asylum for Insane, and Normal Schools have power to use any money standing to their credit permits the withdrawal of funds, for the purpose of erecting buildings or for improvements, or paying the running expenses in the following manner:

Insane Asylum: Proceeds of the sale of 50,000 under 1898 Act and of 100,000 acres under Enabling Act.

Agricultural School: Income from the investment of moneys arising by the sale of 100,000 acres under Act of 1898; entire proceeds from sales of 150,000 acres under Enabling Act.

School of Mines: Proceeds from sale of 50,000 under 1898 Act and of 150,000 under Enabling Act.

University: Proceeds from leasing of two townships under 1898 Act, and income from the investment of moneys derived from the sale of said two townships. Also income from the investment of moneys derived from the sale of the 65,000 acres {*303} granted under 1898 Act; proceeds derived from sale of 200,000 granted under Enabling Act.

Under the Laws of 1905, these organizations being "other institutions" the right to the proceeds and moneys herein last above mentioned and set forth would not be changed. The attempted grant of moneys from the sale of township lands granted would be of no effect, for the Congressional grant provided that such moneys should be invested and only the income used, and our Legislature had no power to change the terms and conditions of that grant.

The Law of 1905 is applicable and applies to the other institutions as follows:

Deaf and Dumb School: Right to the proceeds of sale and lease of the 50,000 acres granted under the 1898 Act and of an undivided one-half of the 100,000 acres granted to it and the Blind Schools under the Enabling Act.

Reform School: Right to proceeds of sale and lease of 50,000 acres under 1898 Act and its proportionate share of the 100,000 acres granted to charitable, penal and reformatory institutions by Enabling Act.

Normal Schools: Right to the proceeds of sale and lease of 100,000 acres under 1898 Act, and of 200,000 acres under Enabling Act.

Institute for Blind: Right to proceeds of sale and lease of 50,000 acres under Act of 1898, and of an undivided one-half of 100,000 acres granted to it and the Deaf and Dumb School.

Miner's Hospital: Right to proceeds of sale and lease of 100,000 acres granted by both acts.

Military Institute: Right to proceeds of sale and lease of 50,000 acres under 1898 Act, and 100,000 acres under the Enabling Act.

Penitentiary: Right to proceeds of sale and lease of 50,000 acres under 1898 Act, and 100,000 acres under the Enabling Act.

Penal, Charitable and Reformatory Institutions: Right to proportion of proceeds of the sale and lease of 100,000 acres under the Enabling Act.

Public buildings, and institutions within the meaning of the act, right to proceeds of the sale and lease of 100,000 acres.

These institutions fall within the terms of the Law of 1905 id. and obtain this money for "buildings, improvements and equipment." The fund belonging to both the establishment of water reservoirs for irrigation purposes and for the improvement of the Rio Grande is not subject to withdrawal.

Section 1 of Article XIII of the Constitution of New Mexico upholds this theory. It 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" seeming to indicate that the laws of the state thereafter shall govern the sale so long as the ultimate object for which the lands were granted is carried out.

Congress regularly approved the above provision and it became as much the law of the United States as the two other and former acts.

There is room reasonably to contend that this constitutional provision supersedes the limitations in the Act of Congress as to the disposal of the lands, which have hereinbefore discussed as though they {**304*} were in full force, and commits the control of the lands entirely to the legislature, but it does not seem necessary to pass on this question at this time.

This opinion is approved by the Attorney General.