

Opinion No. 17-2021

July 18, 1917

BY: HARRY L. PATTON, Attorney General

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

Money Derived from the Sale of Lands Granted by Congress For Establishment of Reservoirs and Improvement of the Rio Grande Is Available for the Use of the Elephant Butte Water Users' Association.

(See Opinion 1985.)

OPINION

Referring to the matter of the use of the funds derived from the sale and income of lands granted by Act of Congress to the State for the use of the various institutions of the State, will say that our Supreme Court has rendered an opinion in which they decide the question which we have had under discussion. The case referred to is entitled State of New Mexico, v. Morgan O. Llewellyn, et al., and numbered on the docket as 1980. In that case the court holds that money in the hands of Morgan O. Llewellyn, as secretary-treasurer of the New Mexico College of Agriculture and Mechanic Arts, which was derived from the sale of lands granted by Act of Congress for the benefit of said institution by the Enabling Act and granted by former acts and confirmed by the Enabling Act, was not subject to be expended for the maintenance or for the benefit of said institution. The court in substance holds that money derived from the sale of lands granted by Section 7 of the Enabling Act, or confirmed by the Enabling Act, becomes a permanent fund in the nature of an endowment. It further holds though, that money derived from the rental of such lands, or from interest upon the investment of the moneys derived from the sale of the lands, might be used for the maintenance of the respective institutions for which granted. The opinion of the court is so clear in this case that comment or advice from me as to what moneys are available for the use of such state institutions is unnecessary.

I should possibly call attention to the fact that the court makes an exception in this ruling in this particular, wherein it points out and quotes from the second paragraph of Section 7 of the Enabling Act. The exception referred to and the quotation from the Enabling Act is as follows:

"Legislative, executive and judicial public buildings heretofore erected in said territory, or to be erected in the proposed State, and for the payment of the bonds heretofore or hereafter issued therefor, 100,000 acres."

A further question arises, however, as to the payment of money to the Elephant Butte Water Users' Association upon requisition for warrant drawn by that association. The

Act of Congress, approved June 21, 1898, (30 Stat. at L. 485), grants 500,000 acres for the establishment of permanent water reservoirs for irrigating purposes and 100,000 acres for the improvement of the Rio Grande and increasing the surface flow in the bed of said river. Our Territorial Legislature, by Chapter 57, Laws of 1905, appropriates an amount equal to ten per cent, or so much thereof as may be necessary, of any net moneys which may thereafter be placed to the credit of the fund derived from the sale of said lands. In my opinion, the opinion of the Supreme Court referred to does not reach moneys in these funds. Referring to the Act of Congress granting these lands and reading the same in the light of the Enabling Act and the opinion of the Supreme Court, I am of the opinion that it was contemplated, and it is my conclusion, that moneys derived from the sale of these last named lands, may be used for the purpose for which granted. It follows that ten per cent. of the amount realized from the sale or rental of these lands is available for the use of the Elephant Butte Water Users' Association, as provided in the Act of 1905. In my opinion, this construction as to the use of funds by the Elephant Butte Water Users' Association, is in accord with Section 7, Chapter 115, Laws of 1917, which referring to the said funds, says:

"and such funds shall be used as directed by the terms and conditions of the grants or as directed by the legislature of the State of New Mexico."