

Opinion No. 18-2101

May 21, 1918

BY: HARRY L. PATTON, Attorney General

TO: Honorable Robert P. Ervien, Commissioner of Public Lands, Santa Fe, New Mexico.

Chapter 69, Laws of 1917, Invalid. Drainage Assessments Against State Lands Granted by Congress Cannot Be Enforced.

OPINION

We have your recent favor in which you ask us concerning the validity of Chapter 69, of the Laws of 1917. This Chapter provides for the payment of assessments made against State Lands lying within drainage districts and makes the Statutes of the State regarding drainage assessments generally, applicable to such State lands. It further provides that such assessments shall be paid from the permanent fund of the institution to which said lands belong, or for the benefit of which such lands have been acquired. You cite us to Chapter 115, of the Laws of 1917, which is in conflict with Chapter 69.

Irrespective of the conflict between the two Chapters, we do not think that Chapter 69, standing alone, can be upheld.

The school and institutional lands of the State were granted by Congress to New Mexico in trust, for specified purposes, and the Enabling Act in Section 10, provides that the disposition of any of such lands, or of any money derived directly or indirectly therefrom for any object other than that specified, shall be deemed a breach of trust. All school and institutional lands to all of the states of the Union have been granted under somewhat similar conditions, and we find that the Courts have consistently held that such lands are not subject to drainage assessments:

Three cases directly in point are:

Edgerton v. Huntington School Township, 126 Ind. 261, 26 N. E. 155;

People vs. School Trustees, 118 Ill. 52, 7 N. E. 262;

Erickson vs. Cass County, 11 N. D. 494, 92 N. W. 841.

All of these cases hold that school lands of the State, and lands granted by the United States to the State for school purposes are not subject to drainage assessments.

The principles involved as we have briefly stated them above, are fully discussed in these cases, and we do not believe it necessary to make any further discussion. We

also call your attention to three other cases in which this proposition is indirectly considered.

Washington v. Henry, 28 Washington 38, 68 Pacific 368;

Morehouse v. Drainage District, 90 Nebraska 406, 133 N. W. 446;

School Directors vs. New Orleans, 138 La. 32, 70 Southern 27.

In view of the foregoing, it is our conclusion that Chapter 69, of the Laws of 1917, cannot be sustained.