

Opinion No. 19-2180

January 31, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

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

Uses That May Be Made of Funds Derived From Grants Made in Enabling Act.

OPINION

Referring to your oral request for an opinion relative to the right of your office to approve a warrant covering requisition from the Elephant Butte Water Users' Association of New Mexico for moneys deposited in the following funds --

"Permanent Reservoirs for Irrigation Purposes, Income Fund."

"Permanent Reservoirs for Irrigation Purposes, Permanent Fund."

"Improvement of Rio Grande, Income Fund."

"Improvement of Rio Grande, Permanent Fund."

I desire to advise you as follows --

Under date of April 28, 1917, Attorney General Harry L. Patton advised you to withhold the drawing of warrants upon the permanent funds until such time as the Supreme Court of this state had passed upon a case involving the question as to what constituted permanent funds under the provisions of the Enabling Act, stating that a case was then pending before that court involving this very question.

The moneys in the state treasury to the credit of the Permanent Reservoirs for Irrigation Purposes Fund, and the Improvement of the Rio Grande Fund, are derived from the sale and rental of lands granted to the Territory of New Mexico by Act of Congress, approved January 21, 1898 (30 Stat. Large, 489). The lands granted to the state, the proceeds from the sale or rental of which were to be used for the purposes above mentioned, were granted by section 6 of the above mentioned Act of Congress.

The language used in this section is almost identical in wording with that used in section 7 of the Enabling Act, wherein grants of land were made to the state for purposes similar to those named in the act under discussion.

In the case of the State of New Mexico versus Llewellyn and Southwestern Surety Insurance Company, 23 N.M., 43, 167 Pac. 414, section 7 of the Enabling Act was before the Supreme Court of this state for consideration, upon the proposition as to

whether or not the proceeds from the sale of lands granted therein to the Agricultural College constituted a permanent fund, and whether or not, if it did constitute such fund, only the income thereof could be expended.

The court, in passing upon this question, held that the moneys derived from the sale or leasing of said lands granted to schools by the Enabling Act in that section constituted a permanent, inviolable fund the income from which only could be used. It was held, however, that the moneys derived from land granted for "legislative, executive and judicial public buildings, heretofore erected in said Territory, or to be hereafter erected in the proposed state, and for payment of the bonds heretofore, or hereafter, issued therefor" constituted a fund, the principal of which could be used, as it appeared from the language used in the granting act that it was the intention of congress that the proceeds from the sale of these lands should be used for the erection of such buildings, or the payment of bonds theretofore or thereafter issued therefor.

We are of the opinion that the lands granted in the Act of 1898 for the "establishment of permanent water reservoirs for irrigating purposes" and "for the improvement of the Rio Grande in New Mexico, and the increasing of the surface flow of water in the bed of said river" are subject to the same disposition as the proceeds from the lands granted in the Enabling Act for legislative, executive and judicial public buildings, etc. We are led to this conclusion by the language of the granting act, which provides that the proceeds from the lands shall be used for the "establishment of permanent water reservoirs," etc., and for the "improvement of the Rio Grande," while in the remainder of the section granting lands for other purposes it will be noticed that the lands are granted for "establishment and maintenance" of various institutions. We are further persuaded to this conclusion by the fact that with the income only from these funds to be used for the purposes named that the proceeds would be so small as to make the grant practically worthless. Any other construction would result in an absurd situation, for it can be readily seen that no reservoirs for irrigation purposes could be established from the income derived from the proceeds from 500,000 acres of land, nor could the Rio Grande be improved and the surface flow of waters in the bed of said river be increased from the proceeds of 100,000 acres of land. In the construction of Acts of Congress we must endeavor to avoid interpretation which would result in absurdities.

In view of the holding of the Supreme Court in the case of State versus Llewellyn, et al. supra, we are of the opinion that all of the proceeds from the sale and leasing of state lands granted under section 6, Chapter 489, 30 Stat. constitute a permanent fund, the income of which only may be used for the purpose named in the Act, but that the proceeds from the 500,000 acres granted for the establishment of permanent water reservoirs for irrigating purposes and the 100,000 acres granted for the improvement of the Rio Grande in New Mexico and the increasing of the surface flow of the water in the bed of said river, constitute a fund, the principal of which is available for the purpose for which the grants were made, and that therefore you are authorized to draw your warrants to the Elephant Butte Water Users' Association of New Mexico, in accordance with the provisions of Chapter 57, Laws of 1905, which Act we consider to be in full force and effect.