

## Opinion No. 21-3186

November 16, 1921

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Hon. H. B. Holt, Las Cruces, New Mexico.

### **Disposition School Funds Received From State Lands. Application of Bateman Act to Expenditure School Funds.**

#### **OPINION**

{\*97} Owing to the importance of the questions submitted and the possible serious results involved in the matters mentioned in your letter of October 31, regarding the disposition of the school funds derived from state lands income received by Dona Ana county from the state treasurer, and the further question as to the applicability of the Bateman Act to the collection and expenditure of school funds, I have been compelled to delay my reply longer than I had anticipated.

I have given careful consideration to the matters mentioned in your letter and have also very carefully read and reread the provisions of the Bateman Act (Sections 1227 to 1233, Code 1915) and find that, at least to my mind, there is no escape from the conclusion that the Bateman Act applies to school expenditures as well as to all others.

Section 1227 refers specifically to "boards of education, boards of trustees and boards of school directors of any school district" and I am not satisfied that any subsequent act has so amended this section as to eliminate from its operation funds raised or collected for school purposes. On the contrary, it appears to me that there appears throughout all of the subsequent legislation governing the subject of the expenditures of school funds a studied effort to not in any way modify the provisions of section 1227 so as to prevent its operation upon school funds.

Section 17, Chapter 105, Laws 1917, is not so inconsistent with the provisions of section 1227 that both cannot stand and be administered together. I do not find any construction of this section by the courts or by this office which would tend to indicate a different holding.

The only indication that there was an intent to change the operation of section 1227 appears in Chapter 46, Laws 1921, which permits the issuance of certificates of indebtedness in an amount not to exceed 90 per cent of the budget, and which provides for the registration of school warrants in consecutive order of presentation for payment, and for their payment in such order. In this last respect, the Bateman Act, in our opinion, is modified insofar as the expenditure of school funds is concerned.

We, therefore, are constrained to hold that the Bateman Act applies to the expenditure of all school funds.

The second question involves the disposition to be made of the funds recently distributed by the state treasurer to the various {\*98} schools, which funds cover amounts collected by the state land office for oil and gas lease rentals for the past two years.

In our opinion the Bateman Act applies also to the expenditure of funds of this nature, as in section 1233, Code 1915, provision is made for funds collected otherwise than by the levy of a tax, and the moneys in question are funds of that class.

The question of policy which is suggested in your letter is disposed of by the fact that the Commissioner of Public Lands transferred to the state treasurer on November first, the sum of \$ 234,000 for distribution to the common school fund and I am advised by Mr. Joerns that the Santa Fe Railway Company agrees to remit immediately the first half of the taxes for the year 1921 due to Dona Ana county, as has already been done by the E1 Paso & Southwestern Railway Company.

The moneys received from the foregoing mentioned source and that distributed to the school fund from the payment made by the Commissioner of Public Lands on October 1 will supply money sufficient to care for at least fifty per cent of the school expenditures under the budget, which is the same amount that your letter states will be provided under the plan suggested therein.

The proceeds of the levy concerning which Mr. Joerns wrote you a day or two ago and concerning which I spoke to you, which was omitted from the roll for the past year will be sufficient to pay all outstanding warrants held by the banks and in this manner the entire situation will be relieved and the schools of Dona Ana and all other counties in the state will be able to carry on for the full term provided for by law.