

Opinion No. 31-156

May 12, 1931

BY: Frank H. Patton, Assistant Attorney General

TO: Honorable J. M. Lujan, State Comptroller, Santa Fe, New Mexico.

{*74} Your letter of May 11th calls for advice as to whether the Cattle Sanitary Board, under Section 4-814 of the 1929 Compilation, should deposit monies of the board with the State Treasurer, and, if such monies are deposited, whether the board has the power, under the laws of this state, to draw on the State Treasurer through the State Auditor for the expenses of the board.

You no doubt have in mind the limitation imposed by Section 30, Article 4 of the Constitution of New Mexico, which provides that, with the exception of interest or other payment on the public debt, money shall be paid out of the Treasury only upon appropriation made by the legislature.

In our opinion this limitation is not applicable to the matter at hand inasmuch as Section 4-814 of the Compilation of 1929 provides for a special fund to be set up in the office of the State Treasurer and to be used for the purposes set forth in said section.

The case of McAdoo Petroleum Corporation vs. Panky No. 3452 in the Supreme Court of the State of New Mexico considered the question of drawing funds from the State Treasury, after such funds had in fact become state monies, and held that such procedure was not legal unless upon appropriation made by the legislature. However, in that case the court did not deal with special funds created by virtue of special acts of the legislature, and no decision was made as to matters of this kind.

However, in our opinion, it was not the intention of the framers of the Constitution to make the limitation apply to such matters as are set forth in said Section 4-814. Here we have an act of the legislature which sets up a special fund in the office of the State Treasurer to be used for the purposes enumerated therein, and it is our opinion that under this Section, the Cattle Sanitary Board could deposit those specific funds with the State Treasurer that they may be used for the purposes specified in the Section, and that the expenses provided for by Sections 4-801, 4-806, 4-809, 4-812, 4-813 and 4-818 and under the limitations applicable thereto may be paid by the State Treasurer on the order of the Board upon proper voucher and warrant by the State Auditor.