

Opinion No. 31-49

February 7, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. J. F. Hinkle, Commissioner of Public Lands, Santa Fe, New Mexico.

{*40} Your letter of February 4, 1931, requests an opinion as to your rights {*41} and duties with regard to the payment of an annual payment of principal and interest upon a special assessment made by the Town of Hot Springs against a lot owned by the State of New Mexico in said town, such assessment being for the construction of a sewer. Said lot being described as Lot 10 Block 42, Government Townsite, Hot Springs, New Mexico.

It is definitely settled that an assessment for local improvements of the kind mentioned is not a "tax" within the meaning of Section 3 of Article 8 of the Constitution, which exempts state property from "taxation."

In "Lake Arthur Drainage District vs. Field", 27 N.M. 183, the Court held that it was impossible, because of the Enabling Act, as accepted and confirmed by the Constitution, for the State to improve granted lands and charge the expense of the improvements against said lands, or funds derived from lands as income, which under the Granting Act could be used for only a specified purpose.

This case refers to only lands granted the State by the Enabling Act, so, in my opinion, if the State should acquire land and does acquire it in other ways against which a charge for improvements has been made, it would be entirely proper for you to pay same out of your contingent or operating fund.