

## Opinion No. 32-506

August 31, 1932

**BY:** E. K. Neumann, Attorney General

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

**ATTENTION:** Hon. John I. Hinkle

{\*174} Your letter of August 30th, 1932 calling attention of this office to Chapter 99, Laws of 1931; Sections {\*175} 101 and 103, Chapter 83, 1929 Compilation and Section 110, Chapter 132 of the 1929 Compilation, has been received.

Section 1 of said Chapter 99 provides in part as follows:

"Any moneys heretofore at any time, or hereinafter, erroneously paid on account of any lease or sale of state lands, \* \* \* shall be paid in the manner hereinafter prescribed."

You desire to know whether or not the Commissioner of Public Lands should take into consideration, the question as to when such applications for refund are filed, the statute which is Chapter 83 of the 1929 Compilation on limitation of actions.

Our statute on limitations of actions is directed toward suits and actions and a limitation is placed upon the period of time in which such suits or actions may be brought.

The procedure to be followed in connection with an application for a refund of an erroneous payment under said Chapter 99 of the Laws of 1931 is, in our opinion, neither such suit or action as is within the contemplation of the proceedings mentioned in our statute on limitations of actions. Said Chapter 99 specifically provides for the re-payment of any moneys heretofore, at any time, \* \* \* erroneously paid \* \* \*." We find nothing in this act which, in any way, places a limitation upon the time in which such application shall be made, and the reference of the matter to the district court is simply a special proceeding for adjudication of the claim.

Said Chapter 99 was enacted primarily to take the place of Section 132-110 which was held void by the Supreme Court in McAdoo Petroleum Corporation vs. Pankey, 35 New Mexico, 246, as being in violation of Article 4, Section 30 of the State Constitution.

From the foregoing, it is apparent that there is no necessity for considering as to whether said Chapter 99 does or does not repeal, by implication or otherwise, our statute on limitation of actions. In other words, our statute on limitations of actions simply has no application to the proceedings set forth in said Chapter 99 of the Session Laws of 1931, and, in our opinion, the Commissioner of Public Lands should give consideration to claims filed for refund of payments erroneously made regardless of time.

By Frank H. Patton,  
Asst. Attorney General