**Opinion No. 37-1589**

April 9, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. John A. Flaska County Assessor Albuquerque, New Mexico

*{*71}* Your letter of April 8th requests an opinion from this office upon the following question:

"Where improvements are made on Federal or State land, under the terms of a lease which stipulates that improvements are to become the property of the Federal or State at the expiration or lapse of the lease, are such improvements taxable?"

In as much as this is a matter of state-wide interest, we have decided to write to you as a county official direct rather than request that this matter be submitted through your District Attorney.

We shall send your District Attorney a copy of this letter for his advice and information.

Article VIII, Section 3, of the State Constitution provides that the property of the United States, the state and all counties, towns, cities, * * * shall be exempt from taxation.

Of course, we have no statute contradictory to this constitutional provision and even if such were the case, same would be unconstitutional as being in contravention of the quoted provision.

I find in 61 C. J., p. 368, sec. 363, that where improvements are made on lands which are owned by the state and have become a part of the land to the extent of the reversionary interest or the fee that they are not taxable.

Apparently the facts must be determined by reference to the contract to place the improvements or in the lease of the land and the reference to improvements and their future status.

In City of Oakland vs. Albers Bros. Milling Company, 184 Pac. 868, defendants had entered into a certain lease of public lands belonging to the City of Oakland.

The lands themselves were exempt from taxation and upon these said lands defendants had erected certain improvements consisting of a dock and warehouses.

It was provided in the lease that these improvements when so constructed should become and remain the property of the lessor.

*{*72}* The Court held that these improvements were not taxable; that they constituted property of the City of Oakland and hence the defendants could not have for any purpose any ownership in them.

In Outer Harbor Dock and Wharf Company vs. City of Los Angeles, 193 Pac. 137, an attempt was made to levy taxes upon certain improvements which were placed upon certain lands owned by the City of Los Angeles.

The Court held that the reversionary interest both in the land and the improvements was not subject to taxation.

Apparently the material fact to be determined is whether the improvements belong to the public and under the terms of the lease mentioned in your letter, if the improvements do not become the property of the state or the Federal government until expiration or lapse of the lease, it would seem that same are taxable under authority of San Francisco vs. McGinn, 7 Pac. 187, 67 Cal. 110. If, however, under the terms of the lease the title to the improvements immediately vests in the state or Federal government, then under the authority of the cases above cited they would not be taxable.

I can only suggest, therefore, that the lease in each case be examined and determination made as to the time of the vesting of title in the state or Federal government.