

Opinion No. 53-5781

July 15, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable E. S. Walker Commissioner of Public Lands Santa Fe, New Mexico

{*183} We are in receipt of your letter of July 14, 1953, in which you request the opinion of this office as to the applicability of the state personnel system as provided in § 10-401 N.M.S.A., 1941 Compilation, as amended, to the Land Office.

Section 10 of the Enabling Act grants certain lands from the federal government to the state in trust and provides for the manner of their disposition. Art. 13, Sec. 2 of the New Mexico Constitution, makes the Commissioner of Public Lands the state officer with the responsibility of the control, care and disposition of such public lands, and § 8-101 of the 1941 Compilation, by statute, also creates the State Land Office and makes the Commissioner of Public Lands the executive officer thereof.

It has been held many times by our Supreme Court that the proceeds {*184} of the sale, lease or disposition of said public lands are trust funds and can only be used for the purpose for which the same were granted to the state; however, it has also been held that the Land Commissioner, as the state officer administering the trust lands and trust funds, is responsible for the administration and the control of all funds acquired thereunder. The courts have held that the Commissioner of Public Lands is a trustee and the laws applicable to the duties of trustees are applicable to the Commissioner of Public Lands. In the case of *United States v. Swope, State Commissioner of Public Lands, et al*, 16 Fed. 2d 215, which involved the expenditure of certain funds in derogation of legislation, but which were reasonable and necessary for the protection of the trust funds, it was held that the Commissioner of Public Lands may expend sufficient moneys and is in complete control of those moneys for the protection of the trust funds.

In the case of *State ex rel Shepard v. Mechem*, 56 N.M. 762, 250 P. 2d 897, the court states that:

"We know the budget officers and members of the Legislature were fearful sufficient money would not be made available to meet the appropriations made in 1951, but **this fact does not afford legal justification for paying out these trust funds for general governmental purposes.**" (Emphasis supplied.)

Therefore, it is the opinion of this office that the Commissioner of Public Lands is the sole person entrusted with the administration of the funds of which he is trustee, as provided in the Enabling Act, the New Mexico Constitution, and the laws of the State of New Mexico, subject to the expenditure being a reasonable one, and that the Legislature is not empowered, nor is the Governor under a grant of legislative power, authorized to restrict the Commissioner of Public Lands in the expenditure of these

funds, whether they be for payment of Land Commission employees' salaries, or for any other necessary and proper purpose under the trust provisions.