

Opinion No. 58-149

July 21, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

TO: Mr. Joseph B. Grant, State Treasurer, Santa Fe, New Mexico

QUESTION

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Should interest earned on the investment of surplus funds, representing income from trust lands dedicated to the common schools, be transferred to the general fund pursuant to Sec. 11-2-25.2, N.M.S.A., 1953 Comp. 1957 P.S.?

CONCLUSION

No.

OPINION

ANALYSIS

We are advised that your office recently invested a substantial sum derived from the common school trust funds in obligations which were paid by par on June 27, 1958, yielding a substantial amount of interest. We understand further that this amount is being held in a suspense account pending the opinion of this office on the question raised.

The question arises by reason of the provisions of Chapter 140 of the Laws of 1955, as amended by Chapter 102, Laws of 1957. (Compiled as Secs. 11-2-25.1, 11-2-25.2 and 11-2-25.3, N.M.S.A., 1953 Comp. 1957 P.S.) That statute, as now amended, provides generally for the investment of state funds not needed to meet current expenses, and further provides in Sec. 11-2-15.2 in relevant part:

"The interest earned from the investment of this money shall be placed into the General Fund of the state."

This language was added by the 1957 amendment. In our view, the addition of this language need not and cannot be viewed as superseding the language of the statute which in Sec. 1 (11-2-25.1) excludes permanent funds and income derived therefrom from the operation of the statute and which further provides in Sec. 3 (11-2-25.3):

"The provisions of this act shall not apply to the investment of permanent funds or the income derived therefrom."

The conclusion reached is in accord with the general rule that interest earned by the investment of a special fund is an increment which accrues to the special fund and not to the general funds of the state or other public body. See 81 CJS, States, Sec. 155, p. 1192. See also A.G.Opn. 57-289, issued November 7, 1957.

The result reached is also required by the controlling provisions of the Enabling Act, 36 Stats. at Large 557, Ch. 310. Lands granted to the State by the United States in the Enabling Act were granted pursuant to specific trust thereby established and the grant of such lands was, of course, accepted by the State upon the terms and conditions of those trusts. Constitution, Art. XXI, Sec. 9. The Enabling Act specifically provided with respect to such trust funds, among other things, as follows in relevant part:

"Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom or, any object other than that for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted, or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust; * * *

"A separate (sic) fund shall be established for each of the several objects for which the said grants are hereby made or confirmed, and whenever any moneys shall be in any manner derived from any of said land the same shall be deposited by the state treasurer in the fund corresponding to the grant under which the particular land producing such moneys were by this act conveyed or confirmed. **No moneys shall ever be taken from one fund for deposit in any other, or for any object other than that for which the land producing the same was granted or confirmed.** * * * (Emphasis added)

These sections were construed by the Supreme Court in **State ex rel. Shepard v. Mechem**, 56 N.M. 762, 250 P. 2d 897 (1952) to prohibit the transfer of an amount appropriated by the Legislature from public land trust funds to the general fund to defray the general expenses of government. The Court concluded that such transfer was an unlawful diversion of trust funds, and that conclusion equally applies here. Nor does anything in Art. XII, Sec. 4 of the Constitution, relating to the current school fund conflict with this conclusion.

Accordingly, we conclude that the interest earned on the investment described in your opinion request of July 17, 1958, is an increment to the common school trust funds and cannot be transferred to the General Fund.