

Opinion No. 13-977

January 16, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Hon. O. N. Marron, State Treasurer, Santa Fe, N. M.

SCHOOL FUNDS.

Money received from United States on account of National forests should go to state current school fund.

OPINION

{*140} I have received your letter of even date herewith in which you inform me that you have received from the treasury department of the United States a draft for \$ 37,969.40, with a statement that of the proceeds of this draft \$ 8,350.04 are to be credited or payable to the state for school funds, "being the receipts from those sections of land set apart within national forests for school purposes as provided by enabling act of June 20, 1910." You express doubt as to whether or not the said amount should be handled as a part of the permanent school fund of the state under Section 2 of Article XII of the Constitution, or be credited to the current school fund under Section 4 of the same article, and ask my opinion on the matter.

Section 6 of the Enabling Act provides as to school sections within national forests, that there shall be paid by the Secretary of the Treasury to the state, "as income for its common school fund," such proportion of the gross proceeds of the national forests within the state as the area of land granted for school purposes may bear to the total area of all such national forests. Under this provision it seems clear that the state either by its constitution or by legislation was authorized to create school funds to which this income should be paid and in pursuance of that authority the sections of Article XII of the Constitution to which you refer were adopted. Section 2 declares what the permanent school fund of the state shall consist of, and it will be seen as far as these school sections are concerned that it is only the proceeds of sales of such sections which are to go to the permanent school fund. This money which you have received is clearly not from sales but more in the nature of income from the use of the lands and is in the nature of rental. Section 4 of said article of the Constitution among other things provides that rentals of all school lands shall be a part of the current school fund of the state.

I can find no authority in Section 2 for putting the money which you have received in the permanent school fund, and am of opinion that it is of such nature that Section 4 requires it should be credited to the current school fund.