

## Opinion No. 16-1859 1/2

August 21, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. Summers Burkhart, U. S. Attorney, Albuquerque, N. M.

**Money received by Commissioner of Public Lands on deposits made by applicants for selection of lands is not money of state.**

### OPINION

{\*414} On Saturday, Mr. Easley told me that you would like to have from me an expression of my opinion as to the status of moneys received by the State Commissioner of Public Lands on deposits made by applicants for the selection of lands, which have been exacted so as to secure the state against the incurring of expense without any return.

This matter was brought to my attention sometime ago by Mr. James, the Director of the Taxpayers Association, and, at that time I told him that the course pursued by the commissioner was in exact accordance with advice which I, as his lawful advisor, had given him. About a month later Mr. James, in the May issue of the "New Mexico Tax Review" attacked the propriety of Mr. Ervien's receiving such deposits and insisted that they are public moneys and should be paid over to the state treasurer.

I have seen no reason to change my opinion. This money is not the property of the state, and could not have been properly turned over to the State Treasurer, and I am quite sure, from what I know of Mr. Marron, the present incumbent of that office, that he would {\*415} have refused to receive any such money. Any money that is once in the state treasury cannot be taken out again, in view of our constitutional provision, except through an appropriation made by the legislature. The money continues to be the property of the depositors, and is held only as security on behalf of the state, and would become state money only in the event of the depositor's failing to come forward at the proper time to purchase the land, unless some other purchaser should appear. If no loss should fall on the state, then the money must be returned.

It is unfortunate that the amount of these deposits should have reached such a large figure, but this could not have been anticipated, and their amount will, in the future, steadily diminish. Much of this large accumulation is probably due to the slowness with which action is taken in the General Land Office upon selections of land made by the state.