

## Opinion No. [29-62]

July 16, 1929

**TO:** Office of the Attorney General of New Mexico

PUBLIC MONIES -- Water Reservoirs for Irrigation Purposes Income Fund may be expended for automobiles.

### OPINION

I am in receipt of your favor of the 13th inst. in which you inform me that the State Board of Finance has just authorized the State Engineer to purchase five automobiles from money appropriated by the last legislature from the Water Reservoir for Irrigation Purposes Income Fund. You ask me for an opinion as to whether or not these funds may be used for such purposes.

Ordinarily, I should say that such a use of the Permanent Water Reservoir for Irrigation Purposes Income Fund would be a flagrant violation of the trust, but in view of the opinion of the Supreme Court in the recent case of Yeo v. Ulibarri, which was brought for the purpose of ascertaining just what this fund could or could not be used for, it would seem that not only automobiles can be bought with the Permanent Water Reservoir for Irrigation Purposes Income Fund, but furthermore said fund can also be spent for almost any purpose or commodity under the sun which those in charge of doling it out consider to be somehow or other connected with "the establishment of permanent water reservoirs for irrigating purposes." Under said opinion it is not even necessary for the legislature, -- "in its wisdom", -- to state that the appropriations which they make from such fund are limited to the strictly lawful purpose of establishing reservoirs. To quote the words of the Supreme Court, "We assume that the money will be lawfully expended, and recognize no duty nor right to interfere until the contrary is made to appear." The Court went on to say that, "Congress, the donor, did not assume to dictate a policy (of how the money is to be spent). It left that to the trustee (the State) in order that it might have the elasticity necessary to meet changes of conditions and advances in scientific knowledge."

As time goes on and "scientific knowledge" continues to advance, it is quite conceivable that some future State Auditor will be called upon to honor a voucher covering the purchase of an aeroplane from the Water Reservoir for Irrigation Purposes Income Fund. This is not at all an exaggeration because it has already been demonstrated that photographs taken from the air disclose conditions around a dam site which cannot be discovered as well on the ground, and consequently some enterprising State Engineer might figure that an aeroplane was as convenient to make "surveys" from as five automobiles. Unless the donor of the trust, the United States Government, objects, and the Supreme Court points out that it has not yet done so, the expenditure would be legal.

You may, therefore, honor the vouchers for the five automobiles.