

Opinion No. [29-66]

April 10, 1929

TO: Office of the Attorney General of New Mexico

PUBLIC MONIES -- Trust funds.

OPINION

I have delayed answering your letter of the 27th ultimo, wherein you requested an opinion from me as to the legality and constitutionality of House Bills Numbers 26, 43, 68, 78 and 72, appropriating money from the Permanent Water Reservoir for Irrigation Purposes Income Fund, passed by the regular session of the Ninth State Legislature, due to the fact that I wished ample time to go into this situation pretty thoroughly. Meanwhile, the Legislature met in special session and everything else was at a standstill until that was over with.

In reply to your letter will state that I have gone into this matter very carefully and have read considerable legal authority on the question of what can and what cannot be done with what may properly be termed "Trust Funds," of which the Permanent Water Reservoir for Irrigation Purposes Income Fund is one, and I am pretty well convinced in my own mind that these bills, appropriating money from said water reservoir fund, constitute a breach of trust, and my advice to you, therefore, is not to set up any funds for the purposes specified in such laws until the courts have passed upon this question. For this very reason I will not go into detail at this time regarding my reasons for this ruling, as I prefer instead to present them to the court in the event of the litigation which I imagine will follow as a result of this ruling.