

## Opinion No. 31-127

April 16, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. George M. Neel, State Engineer, Santa Fe, New Mexico.

{\*63} Reference is made to your letter of April 14th and copy of letter from the Land Commissioner of April 10, both of which are in regard to the sale of state land upon which the State Engineer has drilled a well under the provision of Chapter 153 of the laws of 1927 and Chapter 144 of the Laws of 1929.

The Commissioner is of the opinion that upon a sale of this land, the proceeds derived from the added value of the well should be covered into the school funds

Upon examination of the statutes it is revealed that the Permanent Reservoirs for irrigation purposes Income Fund was created by Chapter 115 Laws of 1917 and is now cited as Section 132-190 New Mexico Statutes, Annotated, 1929 Compilation.

In Section 132-191 of the 1929 Compilation it is provided among other things that the current and income funds shall consist of rentals, sale of products from lands, interest on permanent funds, \* \* \* such other moneys as may be specifically provided by law and miscellaneous income not provided for by this act.

It appears to the writer that the added value of a well of this nature is within the contemplation of the words "such other moneys as may be specifically provided by law and miscellaneous income not provided for by this act." If this is true, then such proceeds become a part of the said fund and Section 132-205 of the 1929 Compilation provides that upon a sale of state lands, the purchaser shall refund the value of the well and same shall be credited to the water fund above described.

It is true that all state lands must be disposed of by the Commissioner according to the statutory requirements, but, in our opinion, this well being covered by special provisions, affords no conflict and the facts regarding such well and the consideration for same may be set forth in the contract of sale. Upon a satisfactory showing to the Commissioner that the value of the well has been refunded to the State Engineer and credited to the proper fund he may proceed with the sale as he may provide for such refund to be made over the thirty year period and then make the necessary credits to the water fund.

By Frank H. Patton,

Asst. Attorney General