

Opinion No. 31-335

December 17, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. James F. Hinkle, Commissioner of Public Lands, Santa Fe, New Mexico.

{*124} We have your letter of December 16th, enclosing letter from Mr. Geo. M. Neel, State Engineer, each having reference to that certain well which was drilled by the State Engineer's department on Section 16, Twp. 14 S., Rge. 9 E., in Otero County.

In your letter you direct our attention to Sections 132-203, 132-204 and 132-205 New Mexico Statutes, Annotated, 1929 Compilation, which in effect provides for the digging and drilling of such wells; that such wells shall be declared an equity of the state besides the land on which same are situated and further that, upon sale of such lands, refund for costs of same to be made to the State Treasurer to be credited to the Water Reservoir for Irrigation Purposes Income Fund.

You also direct our attention to Section 10 of the Enabling Act, which in part provides, "that no mortgage or other encumbrance of said lands (referring to state lands) or any part thereof shall be valid in favor of any person or for any purpose under any circumstances whatsoever."

You desire to know if the Commissioner of Public Lands has the jurisdiction and right to have the said well appraised as to its real actual value at this time, and lease the land and demand and receive payment for the value of such improvement as appraised, and whether or not the funds so received should be paid into the State Land Office or whether such funds should be paid as a refund to the State Treasurer to be credited to the Water Reservoir for Irrigation Purposes Income fund.

This office has already held, under date of April 16, 1931, in a letter addressed to the State Engineer, that these funds should be refunded to the State Engineer through the State Treasurer and credited to the aforementioned fund.

Referring to the section above quoted, of the Enabling Act, wish to say that it is our opinion that the funds provided for by Sections 132-203, 132-204 and 132-205 of the 1929 Compilation are not within the meaning of said section of the Enabling Act, and that these do not constitute a mortgage or other encumbrance within that section and that the statutory provision and the provision of the Enabling Act are not in conflict.

It is our opinion that upon the sale or disposition of these lands the purchaser should refund and pay to the State Treasurer the value of the well upon such property, as provided by Section 132-205.

By: Frank H. Patton,

Asst. Attorney General