

Opinion No. 31-34

January 28, 1931

BY: E. K. Neumann, Attorney General

TO: Hon. J. M. Lujan, State Comptroller, Santa Fe, New Mexico. Attention: Mr. F. R. Gould.

{*34} In your letter of January 26th, you desire an opinion as to whether or not the State Comptroller, under the Comptroller's Act of 1923, may make or cause to be made an audit of the funds of the Las Vegas Land Grant.

The District Court of San Miguel County, by chapter 47 of the Laws of 1903 and now cited as Section 29-601 of the 1929 Code, is vested with jurisdiction to manage, control and administer the said grant.

By Section 4 of Chapter 47 of the 1903 Session Laws, the District Court of San Miguel County is given the exercise of the same control, under the Board of Trustees and under the Acts and Doings of said Board of Trustees, that Courts of equity exercise over receivers appointed by them, and over the acts and doings of their receivers.

By Section 2 of the 1903 Law, it is provided that the District Court has the appointing power of such Board of Trustees.

A receiver appointed by a Court of Equity is briefly an arm of the Court, and his acts are in general considered as the acts of the Court itself.

By virtue of the Session Laws of 1913, Chapter 86, the Board of Trustees of the Las Vegas Land Grant is required to invest any and all moneys in its hands in certain ways specified therein. Section 8 of the 1903 Law authorized the Board of Trustees to contract and transact all business coming before said Board, and the District Court was authorized to promulgate Rules and Regulations under which the said Board should transact all business pertaining to the management, control and administration of the said Grant.

Chapter 86 of the 1913 Session Laws in Section 1, also provides that the moneys when invested by the Board are to constitute a permanent {*35} school fund, and Section 2 of said Chapter 86 of the 1913 Session Laws provides that bonds and securities in which said funds are from time to time invested shall be deposited with the Treasurer of San Miguel County, and it is made the duty of the Treasurer to receive and have the custody of such bonds and securities, and collect and pay same over to the Treasurer of the Board of Trustees, and other provisions are set forth.

The State Comptroller's Act is cited as Chapter 48 of the Laws of 1923 and the title of said act is as follows:

"An Act to create the office of State Comptroller and to provide for a uniform system of public accounting."

The title, of course, includes other matters not pertinent to this discussion

It is our opinion, in the first instance that the funds handled by the Board of Control of the Las Vegas Grant are public funds, and within the meaning of our public monies act. It is our further opinion that, due to the title of the above cited Comptroller's Act, it was the intention of the legislature to provide a system of uniform accounting applicable to all public monies of whatsoever nature, unless special exception is made by statute.

To say that the District Court of San Miguel County has the right and power to exercise unqualified control over the public funds of the Las Vegas Land Grand would, in our opinion, be to say that the legislature has the right to impose purely ministerial functions upon a judicial body, and this statement would, of course, be in conflict with the general principle as to the separation of the powers of the government. In fact, it may be doubted that the legislature has the power in the first instance to place such control in the hands of the District Court.

At any rate, should it be contended that, by virtue of Section 29-604 of the Code, the State Comptroller has not power to make an audit of the funds in the hands of the Board of Trustees of the Las Vegas Land Grant, then we can meet such contention by the assumption that said Section is amended by implication by the State Comptroller's Act, and that such power is now vested in the State Comptroller.

By: Frank H. Patton,

Asst. Att'y. General