

## Opinion No. 33-551

January 12, 1933

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

**TO:** Hon. Clinton P. Anderson, State Treasurer, Santa Fe, New Mexico.

{\*24} Referring to your letter of January 10, 1933, which states that on December 29, 1932, the treasurer of the United States sent to the Treasurer of this state a check in the sum of \$ 42,587.21, which represents the state part of the bonuses, royalties and rentals upon minerals under the Mineral Leasing Land Act. You also state that said check represents a total due the state in the sum of \$ 44,209.66, from which has been deducted the sum of \$ 1,703.45, which is claimed due the United States because of gasoline taxes collected by the state from employees of the United States travelling in this state upon official business during the period from January 2, 1928, to June 23, 1932. This amount, \$ 1,703.45 is being withheld until such time that such claim has been otherwise satisfactorily adjusted.

You ask the following questions:

1. Can you, be held personally liable in case you give to the State Board of Education the check, thereby depriving it of \$ 1,703.45 legally due it?
2. Whether, in case you deliver such moneys to the State Board of Education, there is some manner in which the \$ 1,703.45 could be recovered and paid into the fund?
3. Whether, the check should be transmitted to the Board of Education with a covering letter, whereby the acceptance of the check would automatically waive any further claim for \$ 1,703.45?
4. Whether the check should be returned to the Treasurer of the United States with a demand for the full \$ 44,290.66 on the ground that in law there is no authority for the Comptroller of the United States to deduct any sums from the moneys due the state under the Mineral Leasing Land Act?

To begin with, it is my opinion that the moneys belong to the State to be disposed of by the Legislature, and, consequentially, the State Treasurer is liable only for the amount he actually receives. If he thinks the amount transmitted is not correct, he should take some steps to have the matter adjusted.

In examining the Mineral Leasing Land Act, I am unable to discover any right given for deduction from that amount due the State, although perhaps, as in other cases, a deduction might be made for an amount due the Government, if the amount due originated out of related matters, or in other words, was due out of moneys derived from the Mineral Leasing Land Act.

In the present case, I believe an arbitrary stand has been taken by the Government in attempting to deduct from these moneys an amount claimed due arising out of other acts or transactions.

I feel, also, that you should return the check received, with a demand for the full amount due the state under the said Act, upon the ground that if the Government has a valid claim against the state it may pursue its claims through the proper channels to the department handling the matters out of which the claim arose, and that no authority is found in law for the deduction arbitrarily made.

The only other alternative is to assume the position that the Government's claim is a correct one and accept the check with a waiver of claim from the departments legally entitled to the money, under the Legislative Act distributing same.