

Opinion No. 39-3202

July 5, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Frank Worden, State Land Commissioner, Santa Fe, New Mexico.

{*77} I have given special attention to your recent letter, enclosing memorandum brief from your office, and inquiring as to the validity and constitutionality of Sections 111-201 to 111-203, 1929 Compilation, being Chapter 78, Laws of 1919.

In the memorandum it is suggested that this Act may be violative of the Constitutional and Enabling Act provisions with respect to the public lands held in trust by the state, by reason of the fact that if the commissioner is limited to the expenditure of \$ 10,000.00 per year, he would be prevented from properly classifying and intelligently administering the trust imposed by the Enabling Act.

This seems plausible and reasonable, but after diligent search I have been unable to find any cases one way or the other on that exact proposition; and cases dealing with the manner of administering such trusts indicate that the Legislature has wide discretion and authority in determining the manner of administering the lands. In fact, Article XIII, Section 2, of the Constitution, provides that the commissioner shall select, locate, classify, and have the direction, control, care, and disposition of all public lands under the provisions of the Acts of Congress relating thereto "and such regulations as may be provided by law."

Under the circumstances, I cannot say this Act is invalid, particularly in view of the fact that the Legislature may not have intended by this Act to restrict expenditures of the land commissioner in all things relating to appraisal, examination, and classification of lands.

In 1912 the Act making provision for the maintenance fund from twenty per cent of the income, provided also that "all expenses incurred by the commissioner or his subordinates in inspecting, appraising, or investigating state lands shall be paid out of said fund." Chapter 82, Laws of 1912, compiled as Section 132-105, 1929 Compilation.

The 1919 Act on the other hand has a {*78} preamble indicating not that there was need for limitation of expenditures from the maintenance fund, but that there was urgent necessity for expenditures of money in gathering "detailed data and information," and provides for the acquisition of such "full and complete data as to the nature, character, quality, and value of the lands of the state," etc. It may well be that the Legislature had in mind additional detailed data than that then being gathered not immediately necessary at the time in administering the trust, but which would be valuable in the future when demand for such properties developed. The expenditure for that purpose in this particular Act was limited to \$ 10,000.00, which is, of course, wholly inadequate to

obtain the necessary appraisals and examinations for administration of the trust. I do not believe, however, that it was the intention by that Act to limit **all** expenditures, including appraisal, investigation, inspection and classification to the sum of \$ 10,000.00 per year.

I believe that both of these Acts may be considered as being in effect; that under the authority of this 1919 Act, in the procurement of detailed information and data, \$ 10,000.00 may be expended; and that under the authority of the other statute whatever is necessary "for the purpose of **inspecting, appraising, or investigating** state lands" in dealing therewith shall also be paid out of said fund over and above the \$ 10,000.00 provided by the 1919 Act, subject, of course, to such limitations as may be now or hereafter provided by other statutes.

That these two statutes were sufficient as appropriations for the purpose is evident from the fact that no other appropriations were made for the Commissioner of Public Lands for many years. Specific appropriations to the Commissioner of Public Lands for certain items appear for the first time in 1933.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.