

Opinion No. 43-4325

June 30, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable Frank Young, Chief, State Police, Santa Fe, New Mexico

We are in receipt of your letter of June 29th, in which you state that various slot machines are being operated at Elephant Butte Dam, which is located within land owned by the United States and under the jurisdiction of the Bureau of Reclamation.

You ask our opinion as to whether or not your officers can enforce the anti-gambling laws of this State as against the operator of these machines.

Unless the State of New Mexico has ceded jurisdiction over Elephant Butte Dam to the federal government in the manner provided by Article 1, Section 8, Clause 17 of the Constitution of the United States, the latter holds title in the same manner as any private individual.

In *Lowe v. Lowe*, 150 Md. 592, 133 Atl. 729, 46 A. L. R. 983, which case was cited at length with approval in *Tenorio v. Tenorio*, 44 N.M. 89, the Court said:

"There are three principal methods by which the United States may acquire land within a state. First, the method spoken of as the constitutional method, being that provided by clause 17, No. 8 Art. 1, of the Federal Constitution, which method is by purchase of the land by the Federal Government from the owners, with the consent of the state, wherein the land is located. Acquisition by this method transfers to the Federal government exclusive dominion and jurisdiction thereover for all purposes, with the single exception of the right by the state through its officers to serve civil and criminal process on such reservation. Second, by purchase without obtaining the consent of the state or by condemnation. In such a case the federal government owns the land thus acquired in the same manner as an individual would, and the state has full jurisdiction thereover for all purposes, with the limitation that its jurisdiction cannot be so exercised as to interfere with the essential and necessary operation of the Federal Government thereon."

With this ruling in mind, the only basis for holding that this State does not have jurisdiction to enforce the anti-gambling laws at Elephant Butte Dam would be that under sections 8-202 and 8-204 of the 1941 Compilation the State has ceded jurisdiction to the United States. These sections, insofar as material, are as follows:

"8-202. The consent of the state of New Mexico is hereby given, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States to the acquisition by the United States, by purchase, condemnation, or otherwise, of any land in this state required for sites for custom-houses, courthouses,

post-offices, arsenals, or other public buildings whatever, or for any other purposes of the government."

"8-203. Exclusive jurisdiction in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes except the service upon such sites of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands."

The only language under which the Elephant Butte Dam could be brought would be that "or for any other purpose of the government." However, it would appear that the doctrine of ejusdem generis would apply and thereby limit the other purposes mentioned to the use of property in a manner similar to those uses specifically set forth. As far back as 1914 Attorney General Clancy, in three opinions, held that by these sections jurisdiction over Elephant Butte Dam had not been ceded.

The Supreme Court, in *State v. Mimms*, 43 N.M. 318, was faced with the question of whether the concessionaire at Elephant Butte Dam was required to obtain a State liquor license. There the Court held only that the State had never ceded its rights to regulate or tax liquor traffic within the State upon lands acquired by the United States government for reclamation purposes. However, based on the cases cited therein, the Court indicated that it did not consider that jurisdiction over this land had been ceded when it said:

"We can add many reasons to those given by the Supreme Court of Washington why the United States Government did not accept, nor did the State of New Mexico cede, exclusive jurisdiction over the land acquired for all purposes."

The First Assistant Secretary of the Interior, in a letter set forth in that case, said:

"In the opinion of this Department, the act of the State Legislature of June 10, 1912, supra, did not have the effect of ceding jurisdiction of the State's civil and criminal authority over the lands within the Rio Grande Reclamation Projects to the United States."

In view of the foregoing, it is my opinion that the State of New Mexico has full jurisdiction to enforce its gambling laws within the limits of Elephant Butte Dam.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD

Asst. Atty. General