

July 1, 1937

Mr. Joe Conway,
Attorney General,
Phoenix, Arizona.

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ARIZONA ATTORNEY GENERAL

Dear Sir:

With reference to the letter from Stockmen's Service regarding a list of claims which have heretofore been submitted to the State Land Commissioner, and a communication filed with said claims, I wish to state that I have studied each claim as presented and have also taken due notice of the letter submitted to the land commissioner.

Section 3023, Revised Code of Arizona, 1928, provides that in cases of rejection of an application the commissioner must return the filing fee. This same section was amended by Section 2, Chapter 10, Laws of 1931-32, First Special Session. In the amendment, the commissioner is given the same authority to refund the filing fee when an application is rejected but added that the department may retain selection and purchase fee if field examination has heretofore been made.

The statute makes the refund of the filing fee dependant upon a rejection of the application. It would therefore seem that if there has been no rejection by the land commissioner the claims in question would be premature. In the event the Land Board would therefore be without jurisdiction to consider them.

The question as to whether there has been a rejection is one of fact, however, it is my opinion that if said land for which the applications in question were made have been leased or sold to different parties than the applicants that there has been a tacit rejection of the applications and in view of the fact that said applications were made almost twenty years ago they are absolutely uncollectible because of the running of the Statute of Limitations. It is my further opinion that since there is no definite time provided by the Land Code as to how long the commissioner may retain an application without either rejecting or accepting it, that if the predecessors in office of the present Land Commission failed to take action during their incumbency in office the statute of limitations, commenced to run upon the expiration of their term. At any event, in view of the fact that the applicants have not taken any action in regard to a refund they are guilty

of laches and would therefore be estopped to take any action at this time.

If the land board is desirous of paying these claims in spite of what I have heretofore said, I am not in a position to say where the money would come from because I do not know whether said money was turned over to the State Treasurer as fees collected or whether it has been kept in the Land Commissioners personal account.

At any event this is purely a question of fact.

Respectfully submitted,

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