

## Opinion No. 53-5834

October 30, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** W. F. Wyman, Comptroller New Mexico College of Agriculture and Mechanic Arts State College, New Mexico

{\*252} This will acknowledge receipt of your letter of October 19, 1953 in which you request our opinion on several matters involving an interpretation of §§ 55-2701 (1) -- 55-2713, 1941 Compilation, Pocket Supplement.

You first ask whether the College has a right to pledge a portion of tuition fees assessed students as additional security for the repayment of building and improvement bonds to be issued to construct dormitories under the authority of the above mentioned statutes. Section 55-2701 (1) authorizes the Board of Regents

". . . to impose and collect such fees from all or specific classes of students in attendance thereat as it may consider desirable to impose and collect for the use or availability or both of such building or buildings, or such facilities, and the proceeds of all such student fees shall be considered income and revenues derived from the operation of such building or buildings or facilities for all purposes of this act."

In contrast with the type of fee above mentioned, "tuition" is defined as follows in Webster's New International Dictionary, Second Edition:

"The price of, or payment for, instruction."

It is our opinion that the legislature had in mind the assessment of a specific fee for the use of certain buildings in the enactment of § 55-2701 (1) and did not authorize the pledge of a portion of receipts collected from all students for general instruction purposes. This conclusion is supported by a reading of § 55-2707 which requires separate records to be kept of all income and revenues from the building, and further provides that none of said income shall be used except for maintenance of the buildings and for debt service. Furthermore, § 55-2703 limits pledge of revenues to the net income from the facilities.

Thus, only income from the facilities can be pledged, and once pledged can be used for no other purpose, except maintenance of the buildings. The additional fees authorized by § 55-2701 (1) are defined as income, but tuition is not defined as income, and cannot be considered as the type of fee contemplated by this section.

You next ask whether the Board of Regents may assess an additional fee to be denominated as a building fee, receipts of which are to be pledged for the payment of the bonds. This type of fee is specifically authorized by the above quoted portion of §

55-2701 (1), and may be assessed against all students if the Board of Regents so desires, since the fee is for the availability as well as the use of the facility.

You next ask whether the College has the right to pledge the net income for other income producing properties as additional security if such income has not already been pledged. This is specifically authorized by § 55-2713. Such buildings may not be mortgaged, but only the income pledged. This is in contrast to the buildings, for the construction of which the borrowed money is to be used, which may be mortgaged under {\*253} the terms of § 55-2711. In connection with this portion of your request, your attention is directed to the portion of § 55-2713 prohibiting the pledge of revenues from facilities

". . . already in existence, the revenues from which have not theretofore been pledged as security for bonds then outstanding."

We feel that under this provision it is very doubtful that the College could pledge revenues to be collected after the maturity date of present bonds on the income because there is no assurance that those bonds will, of necessity, be paid on the date prescribed, and all revenues until the bonds are **actually** paid are pledged as security.

You last ask whether the College has the right to pledge unpledged income from its lands and permanent funds as additional security for the proposed issue. Although the Legislature could have given you this authority had it so desired, a reading of the statutes under which you propose to issue the bonds indicates that you have no such authority.

We trust the foregoing will be of assistance to you.

By: Walter R. Kegel

Assist. Attorney General