

Opinion No. 57-276

October 25, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Marshall S. Hester, Superintendent, New Mexico School for the Deaf, Santa Fe, New Mexico

QUESTION

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1. May the New Mexico School for the Deaf invest "maintenance funds" (consisting of monies from General Appropriations plus school funds and land grant funds) not immediately needed, in 91 day United States Treasury Notes?
2. If so, under what conditions may this investment be made?

CONCLUSIONS

1. School Funds and land grant funds may be so invested -- not General Appropriations Funds.
2. Invested by Treasurer and approved by Board of Finance.

OPINION

ANALYSIS

Before embarking on specific statutory analysis relating to the questions herein, this office wishes to point out that all monies expended by a state institution must be validly appropriated by the Legislature, no matter the source of such funds. This applies to General Appropriations, school, or land grant monies.

Section 11-2-6, N.M.S.A., 1953 compilation, provides that the controlling boards of:

"The various public and educational institutions in this State . . . are hereby designated as boards of finance for such institutions"

Section 11-2-8, N.M.S.A., 1953 Compilation, provides that the State Board of Finance need not give prior approval of land grant and school fund investments.

Section 11-2-9, N.M.S.A., 1953 Compilation, provides that:

"Any official given authority by law to make or approve the investment of any permanent land grant or school fund . . . may request the state board of finance to investigate any security in which it is proposed to invest any of said funds. . . ."

Section 11-2-10, N.M.S.A., 1953 Compilation, authorizes the State Treasurer:

"with the approval of those officers and boards whose approval is required by law, to invest any part of the permanent school fund, or any other fund derived from lands granted to the state of New Mexico . . . in any bonds, notes, obligations or debentures of the United States of America . . . the principal and interest of which is unconditionally guaranteed by the United States of America"

Hence, 91 day Treasury Notes being primary obligations of the United States, our answer to the first question is that validly appropriated school funds and land grant funds may be invested by authority of the State Treasurer in such Government obligations, with the approval of the Board of the New Mexico School for the Deaf. Inasmuch as we find no statutory authority for similarly investing General Appropriations funds, we are of the contrary opinion as regards such monies.

As to the second question, the investment conditions are statutorily indicated. The State Treasurer is authorized to make the investment with the school board's approval. If so desired by the investing authority, the State Board of Finance may be asked to investigate the security and report on the same.