

## Opinion No. 65-138

July 22, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

**TO:** Mr. John S. MacKay, Business Manager, New Mexico School for the Deaf, 1060 Cerrillos Road, Santa Fe, New Mexico

### QUESTION

#### FACTS

The New Mexico School for the Deaf is in receipt of a bequest of \$ 1,000 from a former teacher at the School who, at the time of her death, resided in New York City. Under the terms of the will, this bequest is to be used over a period of years to help two students through Gallaudet College, a college for the deaf in Washington, D.C.

#### QUESTIONS

1. Is the money received under this bequest subject to budget control, and should this income and expenditures be included in our budget reports to the Board of Education Finance and the Department of Finance and Administration?
2. May this money be invested in a savings account or government bonds in order to earn additional funds?

#### CONCLUSIONS

1. Yes.
2. Yes.

### OPINION

#### {\*230} ANALYSIS

Through the years moneys received by state agencies and institutions by way of bequests and donations have caused considerable difficulty in the area of approximations, budgets and expenditures of such funds. See for example, Opinion Nos. 62-9, 62-71 and 62-88.

The language in the General Appropriation Act of 1965 (Chapter 313, Laws 1965) provides that "In addition to the general fund appropriations herein specified, **all** other institutional receipts, grants, unencumbered incomes and prior unexpended balances

also are appropriated." Thus the money received from this bequest has been appropriated.

The 1965 General Appropriation Act goes on to provide as follows in regard to educational institutions:

"All expenditures of funds from **any source whatsoever** shall be in accordance with annual budgets approved by the board of educational finance and the department of finance and administration." (Emphasis added.)

The statutory provision creating the Board of Educational Finance (Section 73-29-15) also provides that:

"The board shall receive, adjust and approve the budgets submitted by the several institutions prior to submission of said budgets to the budget officers of the state. . . ."

The 1965 session of the New Mexico Legislature enacted a new Section 73-29-15.1 (Chapter 267, Laws 1965), providing as follows:

"In its distribution of available funds and its adjustment and approval of budgets, the board of educational finance shall not, in any event or in any manner, substitute for public funds any gift, donation, private endowment or other gratuity received or enjoyed by an institution in determining the adequate financing of an institution under its charge."

To recap up to this point, we note the following: (1) expenditures of funds by state educational institutions, no matter what the source of such funds, must be in accord with annual budgets approved by the Board of Educational Finance and the Department of Finance and Administration (Chapter 313, Laws 1965); (2) the Board of Educational Finance adjusts and approves the budgets of educational institutions prior to transmitting such budgets to the Department of Finance and Administration (Section 73-29-15); (3) in this adjustment and approval process the Board of Educational Finance is not to take into consideration gratuities received by the institution in determining the amount of public funds needed by the institution (Section 73-29-15.1).

While there is no such specific statutory restriction as that contained {*\*231*} in Section 73-29-15.1 imposed on the Department of Finance and Administration, common sense and good government would dictate that it follow the same procedure in regard to such bequests as we are here dealing with.

The present bequest makes the Board of Regents of the School for the Deaf trustee of the money received under the will. The School itself is only the nominal beneficiary. The ultimate beneficiaries are the two children to be educated. In the absence of such bequest, the School would not use appropriated public funds for the purpose dictated in the will. Thus if its budgeted public funds were going to be reduced by the amount of such bequest, prudence would dictate that the bequest be refused. The School has no carte blanche to use such funds for general school purposes; it is given no leeway in

their use. Accordingly the School's operations would be damaged if the budgeted public funds were to be reduced by the amount of the bequest. And bear in mind that the bequest might have been \$ 100,000.

It is inconceivable that a budgetary authority would act in such a manner that a bequest for a very worthwhile purpose would have to be refused.

Since, under the will, the School has eight years to use the bequested money, the next budget submitted to the Board of Educational Finance should reflect this bequest and the use to be made of the money.

In your second question you ask whether the bequested money may be invested in a savings account or government bonds. You state that the interest as well as the principal would be used as directed in the will making the bequest. The answer is yes.

Under Section 11-2-6, N.M.S.A., 1953 Compilation, the Board of Regents is the board of finance for the School for the Deaf. Section 11-2-54, N.M.S.A., 1953 Compilation provides that educational institutions are not required to pay all moneys into the state treasury but moneys are to be deposited in a qualified depository. Further, Section 11-2-25.1, N.M.S.A., 1953 Compilation (P.S.) provides that:

"All moneys of the state of New Mexico, except permanent funds and income derived therefrom, not needed to meet expenses of state government for the ensuing quarter year should be invested in interest bearing time deposits or short term United States government securities. No funds other than those necessary to meet such expenses should be permitted to remain in non-interest bearing accounts in state depositories."

Also see Section 73-30-15, N.M.S.A., 1953 Compilation; Opinion No. 62-88.

We conclude, therefore, that this money may be invested in a savings account or government bonds.