

Opinion No. 75-63

November 18, 1975

BY: OPINION OF TONEY ANAYA, Attorney General

TO: Vincent J. Montoya, Director Department of Finance and Administration Capitol Building Santa Fe, New Mexico 87503

QUESTIONS

QUESTIONS

May New Mexico college student loan bonds be purchased with severance tax permanent fund money?

CONCLUSION

Yes.

OPINION

{*170} ANALYSIS

There are three funds which result from the levying of severance taxes -- the severance tax bonding fund (Section 72-18-30, NMSA, 1953 Comp.), the severance tax permanent fund (Section 72-18-30.1, NMSA, 1953 Comp.), and the severance tax income fund (Section 72-18-30.1, NMSA, 1953 Comp.). This question relates solely to the severance tax permanent fund and the only statute providing specifically for the investment of monies from that fund, Section 72-18-30.2, NMSA, 1953 Comp., states simply that:

"Money in the severance tax permanent fund shall be invested by the state treasurer in accordance with the investment standards used in investment of the state funds and in accordance with the policy and regulations of the state treasurer."

The statutory restrictions on investments of the severance tax permanent fund are broadly stated and include no language which would necessarily prohibit investing the severance tax permanent fund monies in student loan bonds.

With respect to the standards and regulations governing the investment of state funds referred to in Section 72-18-30.2, **supra**, Section 11-2-8, NMSA, 1953 Comp. provides, in general, that no state funds may be invested without the prior approval of the State Board of Finance. Thus, we would conclude, at the least, that an investment of the severance tax permanent fund may be made in student loan bonds only with the prior approval of the State Board of Finance.

More particular standards and regulations governing the investment of state funds appear in various provisions of our statutes, including Sections 11-2-8.4 to 11-2-8.19, NMSA, 1953 Comp., enacted by the Laws of 1957, Chapter 179. While the title of that act states in part that it shall relate to the investment of public funds, it is clear from the content of the act {**171*} that the standards and regulations contained therein apply only to the investments of the **state permanent fund** which is defined at Section 11-2-8.4(C) as "those funds derived from lands under the direction, control, care and disposition of the commissioner of public lands conferred by Article XIII, Sections 1 and 2 of the Constitution of the State of New Mexico." The limitations placed on the investment of the state permanent funds are, therefore, not legally binding on the investment of the severance tax permanent fund. Those limitations may, however, be considered relevant to investment of other state funds. As explained in the Opinion of the Attorney General No. 64-29, dated March 9, 1964:

"In our opinion, the strict standards set by the state legislature and the state constitution for the investment of permanent funds derived from lands under the care of the commissioner of public lands may be utilized by the state treasurer and the state board of finance for determining which securities and investments are proper for the investment of the permanent funds [belonging to the Museum], although certainly such enumerated investments are not controlling upon the board of finance and the state treasurer."

We would similarly conclude that while the statutes relating to the investment of the state permanent funds are not controlling in this case, the state treasurer should be guided by those statutes in selecting investments for the severance tax permanent fund. Specifically, Section 11-2-8.12, **supra**, which enumerates the classes of securities and investments allowed for the state permanent fund may be used to evaluate investments with other funds.

The investment in question here is in those bonds described in Section 73-38-8, NMSA, 1953 Comp. which authorizes the State Board of Finance to issue negotiable revenue bonds called the "New Mexico college student loan bonds" and provides that such bonds "shall be executed on behalf of the state as special obligations of the state"

These revenue bonds are part of the funding cycle set out by the Student Loan Act [Section 73-38-1 to 73-38-13, NMSA, 1953 Comp.]. Proceeds from the sale of the bonds are deposited in the student loan fund (Section 73-38-11, **supra**). The student loan fund is used to buy student loan notes guaranteed by the United States which become the collateral for the student loan fund (Section 73-38-3). Money received by the state in repayment and interest on the student loans is credited to the student loan sinking fund which is then used to pay the principal and interest on the revenue bonds as they become due. (Section 73-38-12.)

Using Section 11-2-8.12, **supra**, as a guide for permissible investments, it seems clear that the student loan bonds fall within at least two classes defined by that section.

First, the bonds are clearly obligations of the state and thus would be in the class defined by Section 11-2-8.12(K);

"bonds, notes, debentures or other obligations issued by the State of New Mexico."

Second, as the principal and interest on the bonds is paid when due from the student loan sinking fund into which repayments of federally guaranteed loans are deposited, the bonds also appear {**172*} to fall within the class defined by Section 11-2-8.12(A):

"bonds, notes or other obligations of the United States, or those guaranteed by, or for which the credit of, the United States is pledged for the payment of the principal and interest or dividends thereof"

Thus, in the exercise of its discretion to approve the investment of severance tax permanent fund monies in student loan revenue bonds, the State Board of Finance may use as a criteria the classes of investment listed in Section 11-2-8.12, **supra**. The board should further be guided by the investment standards described in Section 11-2-8.13, **supra**.

In sum, we conclude that severance tax permanent fund monies **may** be invested in student loan bonds if approved by the State Board of Finance and that guided by the statutory standards for the investment of the state permanent fund, it would appear that such approval would be proper.

By: Jill Z. Cooper

Assistant Attorney General