

Opinion No. 13-1095

August 27, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Hon. O. N. Marron, State Treasurer, Santa Fe, N. M.

BONDS.

State Treasurer is authorized to borrow money to pay interest on Series "B" bonds.

OPINION

{*267} I have to acknowledge receipt of your two letters of even date herewith on the subject of the payment of interest on Series "B" bonds, all of which series issued up to this time has been on account of indebtedness of Santa Fe County. You say that you find there is available according to the books of the treasurer of Santa Fe County for the payment of interest on these bonds which will be due September 1, \$ 2,259.46, while the exact amount of interest will be \$ 3,587.76, leaving a shortage of \$ 1,328.30; and you ask, in substance, whether you have any authority to pay the interest, and especially whether you may under Section 1 of Chapter 45 of the Laws of 1913 borrow from any fund available sufficient money to make up the difference, and you also ask as to the proper form of procedure to secure the amount of \$ 2,259.46 from the treasurer of Santa Fe County. You also express the view that under Section 23 of Chapter 16 of the Laws of 1912 you have no authority to pay from state funds which are derived, in part at least from taxes levied on other counties, the shortage in the amount available from Santa Fe County for the payment of interest on its portion of Series "B" bonds.

I am clearly of opinion that it is your duty to provide for the payment of all of this interest and that you are authorized to proceed under said Chapter 45 of the Laws of 1913 in order to get the money for this purpose. That statute authorizes you in order to provide for the prompt payment of interest on the bonded indebtedness of the state, to borrow money upon the best terms possible, at a rate of interest not to exceed 6 per cent and for the shortest practicable time, in quantity sufficient to pay any interest as it accrues whenever the money in the state treasury applicable to such payment is insufficient to meet maturing interest coupons, unless there should be money in one or more of the funds arising from the proceeds of the administration of public lands donated by congress, money not needed for immediate use, in which case you can borrow the necessary money from those funds.

My reason for this view is that the bonds of Series "B" are no longer debts of any county, but evidence an indebtedness of the state. By Section 1 of Article IX of the constitution the state has assumed the debts of all the counties which were valid and subsisting on June 20, 1910, and has pledged its faith and credit for the payment thereof. It is true that Section 2 of the same article provides that no county shall be

required to pay any portion of the debt of any other county assumed by the state, but that in no way militates against the advancement from state funds of money necessary to pay interest on state {*268} bonds issued in payment of county debts, and the correctness of this view is emphasized by the provisions of Section 5 of the same article which prohibits the enactment of any law releasing any county from its obligation to pay to the state money expended by the state by reason of its assumption or payment of the debt of such county. It seems clear from this section that the constitution contemplates the possibility of the expenditure of money by the state to pay the debts of the counties in advance of receiving the money from the counties applicable to such purpose, and the subsequent reimbursement of the state by the counties. The constitution pledges the faith and credit of the state for the payment of these bonds and that pledge is repeated in the bonds themselves, made in pursuance of the form prescribed by statute in the last clause of the last paragraph immediately preceding the attesting clause. The bonds have been issued and taken on the faith of that pledge and on the credit of the state and the obligation rests upon the state to pay the interest no matter what may be the condition of the county for the debts of which bonds have been issued. If the county does not furnish enough money with which to pay the interest, the state must pay it and the county is liable to the state for any money so paid out.

As to the procedure by which you can obtain from the county treasurer the money heretofore collected and in his hands applicable to the payment of the interest on these bonds, I am of opinion that the county treasurer should pay over the money to you, taking your receipt therefor, in which should be specified each fund from which the money comes. There is no direct statutory provision on this subject, but the procedure should be the same as that which is declared by Section 23 of Chapter 16 of the Laws of 1912, as to the paying over of the proceeds of taxes to be levied after the passage of that act. It occurs to me, however, that probably a portion at least of the moneys now in the hands of the county treasurer are from taxes which were levied in 1912 after the passage of said Chapter 16, and in that case that section distinctly controls. It provides, in substance, that the local authorities in the respective counties shall collect the taxes and transmit the proceeds to the state treasurer in the same manner and at the same time as other taxes for state purposes. I have no doubt that the treasurer of Santa Fe county his attention being called to the matter, will pay over the money to you as hereinbefore recommended.