

Opinion No. 13-1101

September 8, 1913

BY: FRANK W. CLANCY, Attorney General

TO: Mr. G. L. Brooks, Albuquerque, N. M.

UNIVERSITY OF NEW MEXICO.

Regents may borrow money to provide quarters for additional students.

OPINION

{*275} Your letter of the 2nd inst. must have been delayed somewhere as it did not reach me until yesterday, Sunday, and I take the first possible moment to answer.

I am greatly rejoiced to hear of the increased registration at the university, even though it may somewhat embarrass you in providing accommodations. I will as briefly as possible call your attention to the statutory provisions which would have any bearing upon your question as to the borrowing of money. I will say first, however, that while I was a member of the board, in order to provide for current expenses when we did not actually have the money we had an arrangement with the Bank of Commerce by which we were permitted to overdraw our account, paying interest on the overdraft and making the overdraft good as we could get the money from the territorial treasurer. I was at one time secretary and treasurer and I think we had such an overdraft almost continuously for a year and a half or two years after I took charge of that part of the work before our receipts overtook expenditures. I was satisfied at that time that there was nothing wrong in this and there never was any criticism expressed. There is some more recent legislation, however, which must be considered.

Section 3573 of the Compiled Laws of 1897, which was a part of the original act creating the university, makes the regents a body corporate with the right of suing and being sued and of contracting and being contracted with. These are the most common powers of a corporation and would include authority to borrow money. The only limitation upon this authority prior to 1912, is to be found in Section 3693a of the Compiled Laws which makes it unlawful for any officer of any territorial institution to incur or contract any indebtedness for such territorial institution, in excess of the sum appropriated for the use or support of the institution for the fiscal year. You will see, however, that there is such indefiniteness in this limitation as to make it difficult of operation as to current expenses. Obviously if there was an appropriation of \$ 5,000, it would be unlawful for a board to contract an indebtedness of \$ 10,000, but the creation of indebtedness for amounts less than \$ 5,000 necessary for the continued operation and maintenance of the institution would not seem to fall within this prohibition. However that may be, I believe that this provision is superseded by one enacted last year.

The act of last year appears as Chapter 69 of the Session Laws of 1912, and the prohibitions are to be found in the first section. They may be stated in condensed form as forbidding such board as yours, authorized to expend money or contract indebtedness against specific appropriations, to make any contract which contemplates an excess of {*276} expenditure beyond the terms of the laws authorizing expenditures; and it is further declared that it is unlawful for any officer of any educational institution who has authority to contract indebtedness, to contract any indebtedness in excess of the appropriation made for the maintenance and support thereof.

If you keep within the limit indicated in that act of the legislature there can be no doubt that you have authority to borrow money, as it is clearly implied that such boards as yours do have power to contract indebtedness which must not exceed the amount of the appropriation. To provide quarters for your additional students is a necessary and proper expense and I can see no good reason why you should not borrow the necessary money for that purpose.