

Opinion No. 13-1119

October 10, 1913

BY: FRANK W. CLANCY, Attorney General

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

UNIVERSITY OF NEW MEXICO.

Regents of University authorized to draw upon any money in treasury to make payment for land and improvements.

OPINION

{*296} I have received your letter of the 7th inst. in which you ask my opinion as to whether the Regents of the University can borrow from the permanent fund and give a trust deed on unincumbered land as security for the loan. You say that there is now available in the permanent fund \$ 3,489.81 which is about the amount you lack to make payment for the Ghost tract of land and some improvements. You further say that, as it is the duty of the Board of Regents to keep the {*297} permanent fund out at interest, you do not see why it cannot be loaned to the University.

By way of explanation of my not having sooner answered your letter, I will say that I did write an answer several days ago, but after it was completed I found it necessary, upon further examination, so to change it that I could make no use of it and, until today, I have had no time to write again.

I will say, first, that I know of no law which imposes any duty upon the Board of Regents to keep the permanent fund out at interest. The controlling provision of law at the present time, on the subject of investment of funds, is to be found in Section 10 of the Act of Congress providing for our admission to the Union, commonly called the "Enabling Act," which requires the state treasurer to keep all moneys in the different funds, arising from Congressional grants of land, invested in safe interesting bearing securities which must be approved by the Governor and Secretary of State.

I am doubtful, however, as to whether the treasurer would be authorized to invest the University Permanent Fund in a loan of the character which you mention, but I do not believe that it is necessary to pass upon this question at this time. As you are doubtless aware, the Constitution in Section 4 of Article XXII, provides that all laws of the territory not inconsistent with the constitution shall remain in force until they expire or are altered or repealed, and there is a statute so remaining in force which, I believe, will meet your present difficulty. That statute is printed as Chapter 72 of the Laws of 1905, and provides that all educational institutions in New Mexico are authorized to expend funds derived from the sale and lease of their lands for buildings, equipment and other permanent improvements. This is in no way inconsistent with the constitution and, taken

in connection with Section 3636 of the Compiled Laws of 1897, seems to authorize the Board of Regents through the auditor to draw upon any money to the credit of the University fund for the purpose indicated in your letter.