

Opinion No. 14-1240

April 25, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable O. N. Marron, State Treasurer, Santa Fe, New Mexico.

STATE HIGHWAY BONDS.

Regarding sale of state highway bonds.

OPINION

{*102} Your letter of the 20th inst. was duly received, together with copies of the bids which were presented to you and opened at ten o'clock on the 20th day of April, 1914, for the purchase of the state highway bonds. You said in your letter that you would like to have me inform you as to whether there are any of these bids which comply with the statute, and as to whether or not they are in such form as you can consider.

These bonds were authorized by Chapter 58 of the Laws of 1912, and the vote of the people of the state at the election held in November, 1912, and that act provides that you are to sell them in such parcels and numbers as the Governor shall direct "to the highest bidder for cash;" and further that you "shall not accept any bid which is less than the par value of the bonds, plus the interest which has accrued thereon between the date of sale and the last preceding interest maturity date." It is further provided in the same section that "immediately after such sale of bonds, the Treasurer shall pay into the state treasury and cause to be placed in the state road fund the total amount received for said bonds, except such amount as may have been paid as accrued interest thereon."

I do not find that any of the bids are in such form as fully to comply with the requirements of the statute so that you can consider them. All of the bids, except one, provide, in substance, for the payment of a less amount than par and accrued interest, the deduction being called either commission or expenses. I am aware of the fact that under similar statutes courts have held that a commission could be paid for making the sale of the bonds, but I am not satisfied with the reasoning in any of those decisions which I have seen, and believe that the payment of anything less than par and accrued interest would be an unjustifiable evasion of the statute. One of the bids offers par and accrued interest to date of delivery in either New York or Chicago, with a provision that you allow the purchaser to deposit to your credit in a bank or banks in the State of New Mexico \$ 180,000.00 of the proceeds, for which you would receive nine certificates of deposit of \$ 20,000.00 each, not bearing interest {*103} and maturing at intervals which would make the last \$ 20,000.00 payable two years and a half later. This is objectionable because it does not contemplate the complete payment to you of the full amount of the purchase price at the time of the sale, but it contains an idea which

suggests to my mind the possibility of your making some arrangement, in your capacity as an administrative officer of the state, by which the bonds can be sold, the money obtained for use by the state highway commission and the public interest fully served and protected.

If you can sell the bonds for par and accrued interest, receiving at once the full purchase price which, as required by the statute, you would pay into the state treasury and cause it to be placed in the state road fund, what you do thereafter with the money for which you become fully responsible is a matter within your discretion as the principal financial officer of the state, and if you can perfect any arrangement by which the state will suffer no loss and the proceeds of the sale of these bonds can be made available as they are needed by the state highway commission, I see no reason why it would not be legal for you to do so. There is nothing in our law, so far as I know, which compels you to exact interest upon deposits of state money in our banks or which would require you to exact any particular rate of interest. Those are matters which are left to your official discretion. At the present time I do not see that I could make any suggestions or give any advice of practical value as to what, if any arrangement you could make with a purchaser by which he would be enabled safely to bid par and accrued interest for these bonds, and probably you will not need opinion or advice from me on that subject. Of course when the time comes for considering that subject if you think that I can be of any assistance you will then call on me.