

Opinion No. 14-1367

October 23, 1914

BY: FRANK W. CLANCY, Attorney General

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

STATE TREASURER.

As to the borrowing of money by the state treasurer for the payment of interest upon Series C bonds.

OPINION

{*227} Upon my return from a ten days' absence I find on my desk your letter of September 22 with a memorandum that it had been mislaid and, therefore, not answered. I am informed that by some accident it was filed away among my permanent letter files, although it had not been answered or marked by me as having been answered. I regret the delay and trust that it has not caused you serious inconvenience.

In that letter you say that since the issuance of Series C bonds, which is the series for the purpose of taking up the railroad aid bonds of Santa Fe and Grant Counties, it has been necessary for your office to borrow money to pay the interest as the revenue from the lands loaned for the purposes of providing for these bonds, has not been sufficient to take care of the interest as yet. You say that from the Water Reservoir Income Fund you have already borrowed some thirty-six thousand dollars, as there was at that time a very heavy balance in that fund, and it did not seem likely that there would be any heavy disbursements from it for some time to come, and you borrowed the money under the impression that within a few months the income from the lands would enable you to repay it.

There can be no doubt of the propriety of your action in borrowing the money as above stated, for the purpose of meeting this interest, as distinct authority so to do is to be found in Chapter 45 of the Laws of 1913. I have heretofore had occasion to advise you on this subject in a general way in opinion number 1095 of this office, which appears at page 267 of the last published report and opinions of this office.

I do not understand, however, that you have any question in {*228} your mind as to the propriety of having borrowed the money, but your difficulty arises from the fact, as you state it, that the State Engineer informs you that it will be necessary, in the near future, for you to repay at least a portion, if not all of the amount so borrowed, and you desire to know whether or not you can transfer from the regular interest fund to "Series C Bonds Interest and Sinking Fund," sufficient money to enable you to return to the "Water Reservoir Income Fund" the amounts which you have heretofore borrowed from that fund. You say that in the regular interest fund, from which is paid the interest on the

old territorial indebtedness only, there is a balance of about one hundred thousand dollars, while the interest required for the next year will not exceed forty thousand dollars.

It strikes my mind that while it may be called a transfer from the regular interest fund to the other fund mentioned, yet, in substance, what you desire to do would be merely to use a fund, which has been set aside for the payment upon one class of state indebtedness, for the payment of interest on another class of such indebtedness. It is a primary duty of the state treasurer to protect the public credit by meeting all demands for interest as the interest becomes due, and he would be justified in going to great lengths in discharging that duty and can properly make use of any money under his control for such purpose, especially when he can do so without disabling himself from meeting other legitimate demands. It is clear, from what you say, that if you make what you call a transfer, as hereinbefore indicated, you will still have on hand in the regular interest fund an ample amount to meet any ordinary demands upon it, and I can see no good reason why you should not take that course, especially when it will stop the six per cent interest which you say is running upon the loan from the Water Reservoir Income Fund. I believe it would be very bad financing if you should not take this course.

I do not know of any statutory prohibition which would interfere with this course, and indeed I am inclined to believe that some of the language used in the proviso to Section 1 of Chapter 83 of the Laws of 1913 could be considered as direct authority for doing what you wish. In that proviso it is stated that any surplus of any fund on hand, not otherwise appropriated, shall be first used to pay any deficit in the amount of money available for the payment of interest before borrowing money to make such payments. It might be said that the regular interest fund, to which you refer, has been appropriated to the payment of the interest for which it was created, but if so appropriated it is only by implication of law and not by any direct action of the legislature. It is true that that very section makes appropriation of three sums of money for payment of interest on different forms of indebtedness, but only so much thereof as may be necessary, and if there is a surplus in that interest fund which is not needed there can be no reasonable objection to its being used to pay the interest on the bonds to which your letter refers.