

Opinion No. 15-1442

February 23, 1915

BY: FRANK W. CLANCY, Attorney General

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

As to payment of interest on Series "A" state bonds.

OPINION

{*31} Your letter of January 16, relative to payment of interest on certain bonds issued, was duly received in this office, but by some accident was filed away before it was answered and only recently my attention was again called to the subject treated of in that letter, and I then found it and discovered that it had not been answered.

The question which you ask is, in substance, whether those portions of the issue of Series "A" state bonds, to the amount of \$ 179,000.00, dated July 1, 1913, which were issued to take up \$ 25,000.00 of territorial bonds issued for the insane asylum under Chapter 76 of the Laws of 1901, and \$ 25,000.00 of territorial bonds issued for the military institute under Chapter 6 of the Laws of 1901, should be paid from the proceeds of sales and rentals of lands donated by congress for the benefit of said two institutions.

The two chapters of the Laws of 1901 above referred to contain the same provision as to payments to be made from the rentals of the lands donated for the two institutions mentioned, and it may be well here to quote the three sections which contain these provisions:

"Section 3. For the purpose of providing funds with which to meet the payment of the said bonds and the interest thereon as the same accrues, it is hereby enacted: First, that all rents derived from the land donated to said Military Institute by the Act of Congress approved June the 21st, 1898, entitled 'An Act to make certain grants of land to the Territory of New Mexico, and for other purposes,' and which have been heretofore or may be hereafter set apart to said Military Institute under the provisions of said Act of Congress, shall be appropriated to the payment of the interest on said bonds as the same accrues, and said rentals shall not be used for any other purpose unless there should be a surplus of funds derived from said rentals remaining after the payment of said interest, in which event, said surplus shall become a part of a sinking fund to be used in paying said bonds when due; and if said rentals shall at any time be insufficient for paying said interest when due, the Auditor of Public Accounts of the Territory is hereby directed to levy annually a tax sufficient to pay any such deficiency and for the purpose of enabling the said levy to be made the Board of Public Lands shall furnish the Auditor a statement showing the amount of lands rented and an estimate of the probable amount which will be realized therefrom each year; and, Second, there shall be set apart and appropriated out of the proceeds of the sale of the first twenty-five

thousand acres of the said land so {*32} donated and set apart to said Military Institute under the provisions of said Act of Congress, all the moneys derived from such sales, until same, in connection with rentals set apart as aforesaid, if any, shall reach a sufficient sum to pay off the principal of said bonds and also to pay all interest thereon, which may have accrued, and been paid by the Territory out of other funds than those derived from rentals of said lands, or which may accrue or become due thereon from time to time.

"Section 4. All funds realized from said rentals and the sale of said twenty-five thousand acres of said land or so much thereof as may be necessary to provide for the payment of said bonds principal and interest, shall be set apart and paid over to the Treasurer of the Territory as custodian, to be by him paid out only in payment of the interest on said bonds as the same accrues, and in payment of said bonds when payable. Provided, Any moneys coming into the hands of the custodian as interest upon said sinking fund shall be made a part of said fund.

"Section 5. In event sufficient funds have not been realized from the sale and rentals of said lands for the payment of said bonds, principal and interest, on the first day of January, A. D. 1921, then, said twenty-five thousand acres of land, or so much thereof remaining unsold at that time as may be necessary, shall be at once put upon the market and sold by the Board of Public Lands under such regulations and laws as may then be in force, and the proceeds realized from such sale shall go to pay any part of said bonds and interest then unpaid when due and to reimburse the Territory for all interest paid by it and remaining unpaid in accordance with section four, hereof."

The Series "A" bonds were issued in pursuance of legislation to carry into effect the provisions of Sections 1 and 3 of Article IX of the Constitution, which contains an assumption of the debts and liabilities of the Territory of New Mexico which were valid and subsisting on June 20, 1910, and Section 3 declares that the bonds to provide for the payment of such indebtedness should be issued as Series "A" bonds. This assumption of the indebtedness of the Territory, being without any restriction or limits, the first impression would naturally be that the new bonds would be simple obligations of the State to be paid for out of the general state moneys without any reference to the original acts of the legislative assembly of the Territory under which the territorial bonds had been issued, but this conclusion is inconsistent with what is to be found at Section 3 of Article XXI of the Constitution, the first sentence of that section being as follows:

"The debts and liabilities of the Territory of New Mexico, and the debts of the counties thereof, which were valid and subsisting on the twentieth day of June, nineteen hundred and ten, are hereby assumed and shall be paid by this state; and this state shall, as to all such debts and liabilities, be subrogated to all the rights, including rights of indemnity and reimbursement, {*33} existing in favor of said territory or of any of the several counties thereof on said date."

It will be seen by reference to the quotation hereinbefore made from the legislation of 1901 that the Territory was given, in substance, a right of reimbursement of all interest

which might accrue and be paid by the Territory out of other funds, from those derived from rentals of the lands donated to the two state institutions. The above quotation from the constitution distinctly declares that the state shall be subrogated to all the rights of indemnity and reimbursement existing in favor of the Territory. Here is a right of reimbursement which has undoubtedly passed to the State, and the interest on these bonds is, therefore, properly payable from the funds derived from the rentals of said lands and from the rentals and sale of the first twenty-five thousand acres of land donated and set apart to the two institutions, respectively.

Your distinct question, however, is as to whether or not at the interest-paying periods sufficient funds should be transferred from the moneys belonging to these institutions and credited to the interest fund before the total amount of interest is paid on Series "A" bonds. Whether the transfer is made before or after the payment of the interest, the practical effect would be the same, and the transfer would better be made in the way best adapted to the system of bookkeeping in your office, but it cannot be said that such transfer should be from any moneys belonging to the institution, but only from those moneys derived from the lands as set out in the legislation of 1901. Each institution has other moneys directly appropriated by the legislature which would not be subject to this payment.