

## Opinion No. 15-1672

November 5, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. John W. Harris, East Las Vegas, New Mexico.

**Borrowing money to meet a deficit in fund of a state institution.**

### OPINION

{\*244} Yesterday I received your letter of the 3rd inst., by which, at the request of the Board of Regents of the New Mexico Normal University, of which you are Secretary and Treasurer, you ask my opinion as to whether you are warranted in borrowing money to meet a deficit in your fund for the fiscal year ending November 30, 1915, caused by the fact that your expenses for the year will exceed the appropriation and income from permanent fund by about \$ 4,000, and further how is the obligation thus incurred to be paid legally.

Section 5158 of the codification of 1915 prohibits such boards as yours "from making any contract, incurring any expense, or contracting any liability against this state, or any public fund thereof which shall make, tend to make, or contemplate any excess of expenditure {\*245} beyond the terms of the laws authorizing expenditures by them, or either of them, or under their direction." Taking the whole section together, this must be considered as meaning that expenditures must be kept within the amounts of money appropriated, as the appropriations by the legislature are the law authorizing the expenditures. As these institutions, however, are continuing in their operation, I believe that any indebtedness incurred during one fiscal year can be met out of the funds which have been appropriated, and will come in from the proceeds of taxes levied for the next fiscal year. I would ordinarily advise that the payment of such necessary indebtedness should be deferred until the new taxes come in, but I have understood from a telephonic conversation with Dr. Roberts, that the immediate payment of some bills would result in a large saving of money. If this is so, I would not hesitate if I were in your place, as a matter of practical business administration, to arrange for a short time loan so as to make those payments, the loan to be paid off at a time when you know the board will have funds from the incoming taxes.

In view of the continuing nature of the state institutions, I am of opinion that the incurring of indebtedness during one fiscal year in contemplation of its being paid out of the appropriation already made for continued support and maintenance, although for the next fiscal year, ought not to be considered as any violation of the law. It is impossible always so to adjust the making of contracts or the incurring of obligations covering the whole scholastic year, which is different from the fiscal year, as to make it practicable to wipe out all indebtedness at the end of the fiscal year, by payment from the appropriation for that fiscal year, and I am sure that you will run no risk of difficulty,

trouble or even criticism by the borrowing of money to meet immediate needs although compelled later to pay something on account of interest.