

## Opinion No. 16-1873

October 2, 1916

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

**TO:** Mr. Charles Wiegand, East Las Vegas, New Mexico.

**Illegal for a board of regents to give any promissory notes.**

### OPINION

{\*423} Your letter of the 30th ultimo was received yesterday, Sunday, and I take the first moment I have had to answer your request for my opinion.

You say that you are a member of the Board of Regents of the New Mexico Reform School at Springer, and that you are now constructing a building for the use of that school and that in the construction, the cost, because of unforeseen matters, will exceed the amount of \$ 25,000 appropriated by the legislature for the construction of the building.

You ask for my opinion as to whether or not it would be illegal for you to meet the additional expense, probably \$ 600 or \$ 800, by giving promissory notes of the Board of Regents.

A portion of Section 5158 of the Codification of last year is as follows:

"Every officer, board, body or agency, or any member thereof, empowered to expend any public money or to direct the expenditure thereof, or to contract indebtedness against or in view of specific appropriations, is hereby prohibited from making any contract, incurring any expense or contracting any liability against this State, or any public fund {\*424} thereof, which shall make, tend to make, or contemplate any excess of expenditure beyond the terms of the laws authorizing expenditures by them, or either of them, or under their direction; and it shall be unlawful for any trustee, superintendent, warden or other officer of any of the educational, penal, charitable or other institutions of this State, who, under the laws, has authority or may be vested with authority to purchase supplies, employ servants or assistants, contract indebtedness, or to do any act contemplating the expenditure of public moneys, to contract any indebtedness in behalf of such institutions or ostensibly against the State on account of such institutions in excess of the appropriations made for the maintenance and support thereof;"

Section 5160 makes a violation of Section 5158 a felony punishable by fine or imprisonment, or by both.

With this statute in force I am compelled to say that it would be illegal for the Board of Regents to give any promissory notes. I believe, however, that the exigency can be met

by raising money upon the individual notes of members of the Board or of citizens interested in the welfare of the school, trusting to the legislature to make an additional appropriation for the money thus raised. You may recall that this was done in two notable instances, one as to the Normal University at Las Vegas and the other as to the Military Institute at Roswell, and there was no difficulty in getting the legislature to make appropriations for the payment of the notes which had been given to banks which furnished the money. In the Roswell case an appropriation of \$ 50,000 was made, as you will see by referring to the Session Laws of 1912, at page 212. If you can raise the money by individual effort in the way suggested, it is reasonably certain that you will have no difficulty in getting the legislature to relieve the persons who contribute the money.