

Opinion No. 31-232

August 4, 1931

BY: E. K. Neumann, Attorney General

TO: Col. J. D. Atwood, Pres., Board of Regents, New Mexico Military Institute, Roswell, New Mexico.

{*95} Reference is made to your letter of July 30th, in which you request an opinion as to the validity of investments of surplus funds of the New Mexico Military Institute, and which are now carried as open deposits in State Depositories. Under the law these funds are only drawing one and one-half per cent interest on average daily balances, and the Board of Regents of said institution wishes to increase the income through investment in some form of securities.

By Section 112-106 of the New Mexico Statutes, Annotated, 1929 Compilation, the boards in control of the various public and educational institutions and all other boards handling public funds are designated as boards of finance for such institutions and boards respectively. Under this provision, the Board of Regents of the New Mexico Military Institute is the Board of Finance of that Institution.

It is further provided, in said section, that such boards of finance shall handle and account, as provided by law, for all public moneys received by it and "shall deposit the funds of such institutions . . . in a depository or depositories qualified . . . equitably and upon the terms and conditions and in like manner and subject to such limitations as in this act prescribed for the deposit of public moneys by other boards of finance."

It is revealed by Section 112-107 of the Compilation, however, that the respective boards of finance shall have the power "to invest all sinking funds, or moneys remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of said county, city, town, village or school district and **all moneys not immediately necessary for the public uses of such county, city, town, village or school district**, in bonds or negotiable securities of the United States of America, or any district of New Mexico if such . . . county, city, town, village or school has a taxable valuation of real property for the last preceding year of at least \$ 1,000,000, and shall not have defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding."

In our opinion and in view of the foregoing provision, it is within the powers of the Board of Regents to make investments within the limitations {*96} set forth in this section and in accordance therewith.

By: Frank H. Patton,

Asst. Attorney General