

## Opinion No. 32-377

February 11, 1932

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. J. M. Lujan, State Comptroller, Santa Fe, New Mexico.

{\*138} We are in receipt of your letter of February 10th inquiring if certain funds coming into the possession of the New Mexico Military Institute, the University of New Mexico and the State Teachers College, that is funds derived from tuition, through book stores and canteens are public moneys.

You also refer to a loan fund of the University, a cadet account of the Institute and a dormitory account of the State Teachers College.

These latter accounts are not described in your letter, but what is said hereafter will, no doubt, answer your inquiry in so far as these particular items are concerned.

On September 22nd, 1931, the Attorney General rendered an opinion to J. D. Atwood of the Board of Regents of the Institute, relative to your question and it was said therein:

"It has been difficult to find a specific definition of public moneys, for most of the books, in treating the matter, are referring specifically to certain statutes in certain states. In Annotated Cases in a note on page 1239 of Annotated Cases 1916 B, we find the following definition: 'The public moneys of the United States are the revenues of the United States from all sources.', which is a quotation from Coudeit vs. United States, 175 U.S. 178. Further in the same note, we find the definition of public moneys as given by a Michigan statute, which statute has been quoted by several courts and approved as a fair definition of the meaning of public moneys.

'All moneys which shall come into the hands of any officer of the state or of any officer of any county or of any township, school district, highway district, city or village or any other municipal or public corporation within this state pursuant to any provision of law authorizing such officer to receive the same.'

It seems to us that the definition of the Michigan statute would be one that would have some effect upon the courts of this state in arriving at the true meaning of the word public moneys, and consequently, using that definition together with the one given to the word public moneys of the United States by the Supreme Court of the United States, we must conclude that those moneys received by your institution for tuition are public moneys.

This conclusion is strengthened greatly by the provision of both the 1929 and 1931 Session Laws in the General Appropriation Acts thereof, wherein, under New Mexico Military Institute, we find several definite appropriations and then the words, 'provided

that non-resident students attending the New Mexico Military Institute shall pay to such institution not less than the actual average cost per student for each scholastic year and that in addition to the above institutional receipts, etc., and other funds belonging to the institution are hereby appropriated, etc."

With reference to the legislative appropriation of other funds belonging to the Institute, we find a similar provision for the University and the State Teachers College.

In view of the foregoing definitions of public moneys and in view of these provisions in the General Appropriations Act, we cannot escape the conclusion that all moneys which come into the hands and possession of these institutions, regardless of source, are public moneys within the meaning of our Public Moneys Act, if in fact such institutions became vested with ownership of such funds.

This, of course, depends primarily {<sup>\*</sup>139} upon a question of fact, but regardless of the name or designation of any particular fund upon the books of the institution and irrespective of its derivation, the moneys composing such fund are public moneys if they are actually funds of the institution.

By Frank H. Patton,

Asst. Attorney General