

Opinion No. 32-443

April 19, 1932

BY: E. K. Neumann, Attorney General

TO: Hon. Warren R. Graham, State Treasurer, Santa Fe, New Mexico.

{*156} Upon March 18, 1932, this office rendered an opinion to you to the effect that you could not legally purchase, from the permanent funds of the University of New Mexico, \$ 60,000.000 of bonds of the University of New Mexico, issued under the authority of Sections 130-913 to 130-925 of the 1929 Code, said bonds to be in denominations of \$ 1,000.00, bearing interest at the rate of 4 1/2 per cent and to be retired serially.

In said letter, among other citations, we referred to Section 7 of Article 12 of the New Mexico Constitution. This citation we believe inapplicable referring as it does to the **permanent school funds**, which, we now believe, has no connection with the permanent funds of the University of New Mexico.

The permanent funds of the University are provided for in the Enabling Act, Section 10, and in said Act it is provided that such permanent funds shall, by the Treasurer of the State, be invested in safe interest bearing securities, to be approved by the Governor and Secretary of State. There is no limitation other than that such funds shall be invested in safe interest bearing securities.

The Legislature by Sec. 4, Chapter 115 of the Laws of 1917 provided as follows:

"xxx All of said moneys in said permanent funds enumerated in Section 3 (132-192, 1929 Code of this Act shall be invested in the bonds of the State or Territory of New Mexico, or of any county, city, town, board of education or school district therein as hereinafter provided."

This provision of law standing alone probably would prohibit the investment of the permanent university fund, as contemplated by you, but we must look to Sec. 130-196 of the Code, which relates to the sale of the University Bonds. The part referred to is as follows:

"xxx The state treasurer may, with the approval of the state board of finance and the other officials whose approval may be required by law for the investment of public funds, purchase such bonds at par and accrued interest to date of delivery for such investment, without the necessity of them being advertised or publicly offered for sale or after rejection of bids for all or any part of any issue xxx."

Section 130-920, 1929 Code is as follows:

"That from and after the passage and approval of this act, all permanent funds thereafter derived from the sale or disposition of the lands held in trust for said university shall be invested in bonds of the United States or of the state of New Mexico, the income of which shall likewise form a part of the pledged income for the payment of the principal and interest of said {*157} bonds issued by said board."

The above cited section can be disposed of by the fact that the permanent funds you now anticipate in investing in bonds of the University of New Mexico were acquired and accrued prior to the passage of said act in 1927, and consequently the above has no bearing upon the present case.

It is our opinion, therefore, that that part of Sec. 130-196 of the 1929 Code quoted amends Sec. 4 of Chapter 115 of the Laws of 1917 to the extent that permanent funds of the University of New Mexico can be invested in bonds of state or territory of New Mexico, of any county, city, town, board of education, school district and bonds of the University of New Mexico, authorized by Sections 130-913 to 130-925 of the 1929 Code. Sec. 130-196 of the Code being Sec. 3 of Chapter 30 of the Laws of 1929 amending, as indicated, Sec. 4 of Chapter 115 of the Laws of 1917.

Our conclusion would be otherwise but for the fact, which fact we have discovered since our opinion of March 18, 1932, that the only public funds subject to investment by the state treasurer are those permanent institutional funds mentioned in Sec. 132-192 of the 1929 Code, of which the University funds are a part, except, of course, the permanent school fund, the investment of which is determined and limited by our Constitution.

With such a state of fact, the quoted part of Sec. 130-196 would be meaningless, unless there were, as we believe, an intention on the part of the Legislature to amend Sec. 4 of Chap. 115, Laws of 1917 as we have herein indicated.

You will, therefore, disregard our letter of March 18, 1932, and be guided by our opinion herein expressed.