

## Opinion No. 36-1437

September 28, 1936

**BY:** FRANK H. PATTON, Attorney General

**TO:** Dr. Donald William MacKay, President Eastern New Mexico Junior College, Portales, New Mexico:

{\*140} We have your letter of September 25th asking advice from this office as to the fee for tuition of your institution to students enrolled in correspondence courses but not enrolled as regular students in your institution.

The Eastern New Mexico Normal School was established by Chapter 9, Session Laws of 1927, in pursuance of a provision of the New Mexico Constitution. At the same session of the Legislature, by Chapter 79, it was provided that a Board of Regents should be appointed for said Normal School and that {\*141} such Board should have the general powers now conferred on the Board of Regents of the other Normal Schools of the state. The general powers thus referred to in said law seem to be those powers given by Sec. 120-1905, et seq. None of these general powers prescribed any particular amount of tuition to be paid by students. Sec. 120-1908 of the 1929 Code provides in part as follows:

"Such board shall also prescribe upon what terms and conditions pupils shall be admitted to such school, but no pupils shall be admitted who are not residents of this state, except on payment of a tuition fee to be prescribed by the board of regents for each term."

All of the rest of the institutions of higher learning are covered in a statute pertaining to tuition by Sec. 130-1314 of the 1929 Code and provides the amount of tuition to be charged to resident students. That section, however, does not cover correspondence course students or extension course students insofar as fixing a definite fee but leaves this to the discretion of the Board of Regents of these respective institutions. This latter section in the statute does not pertain to your school as it was passed prior to the establishment thereof.

The only provision which we can find applicable to your school, with regard to charging tuition to its students, is the provision in the 1925 Appropriation Law providing that an amount of not less than \$ 100.00 per year be charged to non-resident students.

We are therefore of the opinion, that, as to resident students and also those enrolling for extension and correspondence courses, the fees, if any, to be charged would be strictly within the discretion of your Board of Regents under the provisions and language of Sec. 120-1908 of the 1929 Code above-cited.

We do not know just what you refer to in the second paragraph of your letter with regard to laws concerning scholarships. If you will write us about this matter further setting forth just what you wish to know we will attempt to give you any information which we can.

By J. R. MODRALL,

Asst. Atty. General