Opinion No. 37-1505

January 13, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. Donald MacKay President, Junior College Portales, New Mexico

*{*41}* This is in response to your recent request for an opinion from this office relative to certain bonds of the Eastern New Mexico Normal.

From an investigation it appears that the bonds referred to were issued under authority of Chapter 104 of the Session Laws of 1935, and were sold to the United States of America. You stated in our conversation and in your written memorandum that the United States of America, the present holder of said *{*42}* bonds, contemplate a cancellation of one of said bonds and if this should be done you desire to know whether a sum equivalent to said cancelled bonds may be withdrawn from the "Interest and Retirement Fund" and be applied to the "Maintenance Fund" to be used for payment of obligations other than the payment of principal and interest on this bond issue.

Section 7 of Chapter 104 of the Session Laws of 1935, provides as follows:

"That the governing board issuing said bonds shall, at the time of issuing said bonds, establish for the payment of the principal and interest thereof a fund to be known as 'Interest and Retirement Fund' into which fund said board shall immediately place a sum not less than the amount necessary to pay the interest and maturing principal of said bonds for the ensuing twelve months, **and annually thereafter shall continue to place in said fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months."**

Section 8 thereof provides:

"That for the faithful and prompt payment of all interest and principal of said bonds as and when the same shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by said board of so much of each year's income from the permanent funds of such state institution, so issuing bonds hereunder, in the hands of the treasurer as shall be needed to provide the 'Interest and Retirement Fund' herein mentioned, **for the ensuing year, and at all times fully and faithfully to keep the same in not less than the amount necessary to pay the interest and principal maturing as aforesaid;** and in addition thereto the issue of said bonds shall constitute an irrevocable pledge by said board of so much of each year's income from the income and current fund derived from the lease of such of said institution's lands as remain unsold, as may be necessary to fully protect the 'Interest and Retirement Fund' for the ensuing year, and **keep the same at all times in proper amount as herein provided."**

Section 11 thereof provides in part as follows:

"That it is hereby made the duty of the State Treasurer of the State of New Mexico, upon receiving written notice from the secretary and treasurer of any governing board of any state institution that such board has issued bonds as herein provided, forthwith to forward and pay over to the secretary and treasurer of such board out of the income from the permanent funds of such institution, a sum sufficient to make and establish the interest and retirement fund, as herein provided, and annually thereafter to pay over a sufficient amount for said purpose, **to the end that said interest and retirement fund shall at all times be kept in the proper amount."**

From the foregoing sections of the law it is apparent that all that is required by law is that the **governing board** of your institution **place and keep** annually in said "Interest and Retirement Fund" a sufficient amount to pay principal and interest on said bonds maturing in the succeeding twelve months.

If, therefore, the holder, the United States of America, cancels a bond which has matured and there is no default or deficit in your "Interest and Retirement Fund," then it would be apparent that you would have a reserve on hand in said fund. On the other hand, if the United States of America instead of cancelling a bond which has matured cancels one due sometime in the far future, then, of course, the status of your "Interest and Retirement Fund" would in no way be affected, at least for the time *{*43}* being, and you clearly would have no reserve in said "Interest and Retirement Fund."

From a purely legal standpoint, therefore, it appears that all that is required of the governing board of your institution is that said board place and keep in said "Interest and Retirement Fund" **a sufficient amount** to pay principal and interest on any outstanding bonds **maturing** in the **succeeding twelve months,** and there is no apparent legal objection to a transfer of funds from the "Interest and Retirement Fund" to the "Maintenance Fund" under the facts stated by you; provided, such transfer or withdrawal is such that it will in no way impair the statutory obligation that said "Interest and Retirement Fund shall at all times be kept in the proper amount" as provided by said Section 7, 8 and 11 of Chapter 104 of the Session Laws of 1935.

By: FRED J. FEDERICI

Asst. Atty. Gen.