

Opinion No. 38-1975

June 14, 1938

BY: FRANK H. PATTON, Attorney General

TO: Hon. James J. Connelly State Treasurer Santa Fe, New Mexico

{*242} Your letter of June 14th sets forth that your office holds certain investments for the permanent funds of the state that are uncollectible and which you list as follows:

Common School Permanent Fund:

\$ 19,000 Harding County 6% Certificates of Indebtedness purchased in the year 1921, etc.

\$ 4,000.00 City of Santa Fe 6% Sewer Certificates (Special Assessment) purchased in the year 1923, etc.

Improvement of Rio Grande -- Permanent Fund:

\$ 7,000.00 City of Clovis 8% Paving Bonds purchased in 1922, etc.

You desire to know if your office has the authority to reimburse these permanent funds from their income accounts by issuing the regular state vouchers for such purpose.

Section 132-190 provides, in part, as follows:

"The following funds are hereby created to the credit of which in the respective proportions to which they are by law entitled, all moneys derived from state lands shall be deposited by the commissioner of public lands with the state treasurer, as nearly as possible on the first day of each calendar month, and the commissioner shall keep an accurate record of all such deposits."

The various funds are then enumerated and include the funds mentioned in your letter, to-wit: Common School Permanent Fund and Improvement of Rio Grande Permanent Fund.

{*243} Section 132-192 then provides, in part, as follows:

"The state treasurer shall keep the permanent funds enumerated in this section, invested in safe interest-bearing securities, and which said funds shall forever be kept intact and inviolable, as hereinafter provided, viz.:"

Then follows the enumeration of the various permanent funds as specified in Section 132-190.

In line with these provisions, we find Section 132-195 of the 1929 Compilation providing, in brief, that the Governor and Secretary of State may approve the purchase of bonds at a premium and direct the same paid from the permanent funds set out in 132-192. In this Section we find a separate sentence reading as follows:

"All permanent losses to any of such funds, however occurring, shall be reimbursed by the state treasurer from the respective income funds created by this act."

Your attention is directed to the fact that Section 132-195 has specific application to the funds mentioned in Section 132-192, to-wit: the various permanent funds which are created by Section 132-190.

The last sentence quoted referring as it does to permanent losses to any of such funds, **however occurring**, is, in my opinion, authority for you to reimburse from the income fund's losses, sustained by reason of the investment of the Common School Permanent Fund in the \$ 19,000.00 Harding County Certificates of Indebtedness, and the \$ 4,000.00 City of Santa Fe Sewer Certificates.

However, it is my further opinion that Sections 132-192 and 132-195 are exclusive in their application, and, this being true, I do not believe the quoted language conveys any authority for reimbursement of the Improvement of Rio Grande Permanent Fund.

It would be my suggestion in this connection, therefore, that this is a matter for legislative attention and correction.