

Opinion No. 41-3851

July 29, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Hon. Russell C. Charlton Brigadier General The Adjutant General Santa Fe, New Mexico

{*84} This will acknowledge receipt of your letter of July 25 requesting the opinion of this office relative to the construction of a new armory in Albuquerque.

The University, with the approval of the State Board of Finance, may issue revenue bonds for the construction of self-liquidating buildings under Chapter 177 of the Laws of 1939. There is no question but that the University would have the right to permit the use of such buildings by individuals, associations, as well as private and public corporations or agencies of the state, and to make a charge therefor and pledge the same in payment of the bonds (Keller v. State Board of Education (Ala.) 183 So. 268), so long as such use is in connection with the University or is not of such a character as to interfere with University purposes. The statute itself authorizing the issuance of bonds for the erection of auditoriums, requires that each separate building so erected shall be treated as a separate unit, and {*85} that the money from it be used solely for upkeep and payment of bonds thereon. Auditoriums would hardly be self-liquidating unless they could be rented out by the University. Section 4 of said act provides that sufficient shall be charged for the upkeep, maintenance and repair of the building, payment of the bonds, and the creation of a reserve fund, and that the Regents "shall make no further or additional charges," "to the members of the student body, faculty instructors and other employees of such institution," thereby indicating a recognition of the right of the University as to others to charge whatever it considers reasonable over and above the amount necessary for such maintenance and operation of the building and funding of the debt.

As in the case of the University, the State Armory Board has no doubt implied powers to obtain by renting or leasing necessary grounds or facilities, and this power is tacitly recognized in Section 93-183, 1929 Compilation, wherein it is stated that whenever any arsenal, armory, etc., is "owned, **rented or leased by the state**, the same shall be under the charge of the State Armory Board"; thus, it follows that the State Armory Board has the right to enter into contracts with the University for the use of any building or facilities at a reasonable rental for a reasonable term, so long as that use does not interfere with their proper use for their primary University purposes.

Whether the long-time arrangement described in your letter, with the large down payment, and without provision for cancellation on the part of the lessor in case University purposes required the exclusive use of the building, would be a reasonable contract within the implied powers of the two agencies, on the strength of which the State Board of Finance would authorize sale of bonds, if, of course, a matter which this

office is not in a position to determine, for the reason that same must be determined in the first instance by the lessor and lessee upon the basis of need, character and length of use desired. It occurs to me that in any event such contract probably would depend for its continuance, regardless of the written covenants thereof, on the will of the Legislature, which, despite the circumstances, would not be bound to continue appropriations for the rental contract.

Trusting that the foregoing sufficiently answers your inquiry, I am,