

Opinion No. 41-3957

November 25, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. M. E. Noble Attorney Board of Directors New Mexico Insane Asylum Las Vegas, New Mexico

{*130} It is with a great deal of hesitancy that we prepare this opinion in response to your request of November 19, 1941. This hesitancy is occasioned by the fact that the Attorney General is faced with a most perplexing dilemma, that of representing two state departments which, under the law, are entitled to his representation. If this were a private matter, we would be compelled to say that since we have previously elected to represent the State Treasurer {*131} in this matter, we must refrain from rendering an opinion in your behalf.

Be that as it may, you have requested this office to determine what should be done with an \$ 11,500.00 premium received from the sale of \$ 250,000.00 of Insane Asylum bonds authorized by the Legislature in Chapter 127, Laws of 1941.

It is the contention of the State Treasurer that this \$ 11,500.00 premium which the Insane Asylum received must be placed by that institution in its "Severance Tax Bond Interest and Retirement Fund," and the State Treasurer, in order to obtain this disposition, has ordered the Severance Tax Division of the Bureau of Revenue to deduct this amount from the amount of severance tax to be remitted to the institution.

The opposite view is apparently taken by the Insane Asylum Board. Its contention is that this premium constitutes a part of the proceeds from the sale of the bonds and may be used, in addition to the \$ 250,000.00, to erect, alter, etc., the Asylum property.

Section 9, Chapter 127, Laws of 1941, provides:

"That none of the **funds** derived from the sale of bonds issued under the provisions of this act, except so much thereof as shall be necessary to defray the costs of the issuance thereof and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended for any purpose other than those for which authority to issue the same by this act is given."

Section 5, Chapter 127, Laws of 1941, provides:

"That the **proceeds** from the sale of said bonds shall be paid to the secretary and treasurer of the directors or board issuing same, and shall by such secretary and treasurer be placed in a separate fund to be known as 'Severance Tax Building and Improvement Fund' to be used and paid out only for the specific purposes in this act enumerated upon order of the directors or board, on checks signed by the president of

the board of directors and by the secretary and treasurer thereof, except such portion thereof as may have been received on account of accrued interest on said bonds to date of delivery, which amount shall be placed in the 'Severance Tax Bond Interest and Retirement Fund' for the liquidation of said bonds as hereinafter provided. The cost of preparing, advertising and selling said bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of said bonds."

"Proceeds" and "funds" mean all monies obtained by reason of the sale of the bonds. The use of these words strongly indicates that the Legislature contemplated that a premium might be obtained from the sale.

The Treasurer urges that by reason of Section 1 of this Act the Legislature intended that the Asylum Board receive only \$ 250,000.00 "for the purpose of erecting, altering, improving, furnishing and equipping any necessary buildings or structures at the New Mexico Insane Asylum." This contention is greatly weakened by the fact that a private sale was authorized and by the additional fact that the words "proceeds" and "funds" were used.

In view of the foregoing and in view of the provisions indicating that of the proceeds only the accrued interest shall be used to retire the bonds and that the balance {**132*} must be used to erect, alter, etc., we are of the opinion that the \$ 11,500.00 premium received by the Insane Asylum Board in the sale of \$ 250,000.00 bonds must be placed by that Board in its "Severance Tax Building and Improvement Fund" and not in the "Severance Tax Bond Interest and Retirement Fund."