

Opinion No. 43-4281

May 7, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. A. S. Hunt, Eastern New Mexico State College, Portales, New Mexico

In our telephone conversation of May 6 you asked our opinion as to whether or not Eastern New Mexico State College could purchase lands with funds now on hand.

The powers of the Eastern New Mexico Normal School at Portales are not set forth in detail but, under Section 55-2135 of the 1941 Compilation, they are given the same powers as other Normal schools. By Section 55-2113, 1941 Compilation, the New Mexico Normal University is given such power. Thus the question resolves itself to one of finance. If your present budget provides for such a purchase there is no question of your right to go ahead and take such step. However, I assume that your budget does not make such provision or you would not have called us. For this reason I refer you to Section 7-401 of the 1941 Compilation which provides, in part.

"The State Board of Finance is hereby given supervision and control of the budgets of all state offices, departments, bureaus and institutions. Such office, department, bureau and institution annually, on or before the 1st day of June, shall submit to the State Board of Finance a budget for the ensuing fiscal year. * * * Such budget shall be subject to the approval of the State Board of Finance and no expenditures shall be made by any such office, department, bureau or institution for the fiscal year covered by said budget until said budget shall have been approved by the State Board of Finance."

Section 7-110 provides that:

"When the Comptroller shall have knowledge of any warrant drawn to cover an expenditure in excess of or not provided by budget allowance * * * the Comptroller shall immediately make demand on the treasurer of the county wherein such warrant will be presented for payment to withhold and refuse the payment thereof."

This section then goes on to provide for the bringing of suit against the treasurer in the event he pays such warrant.

In view of the foregoing, it is my opinion that the Eastern New Mexico State College cannot purchase any lands unless such expenditure is provided for in the budget of such school.

By each session of the Legislature the State Board of Finance is given power in the appropriation bill to adjust budgets. For this reason it would appear to me that your only course would be to submit a proposal to the State Board of Finance setting forth the source of the revenue which you propose to use, whether it will take a new item in the

budget, the reason for the adjustment and such other information as may be pertinent. However, if the need is not pressing it occurs to me that it might be easier to merely set this item in the budget which you will submit June 1st and in this manner not require special action by the State Board of Finance.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General