

Opinion No. 54-5991

July 16, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Robert D. Castner State Auditor State Capitol Building Santa Fe, New Mexico

{*447} In your letter of July 12, 1954 you request the opinion of this office as to the existence of statutory provisions prohibiting the State Board of Finance from authorizing the State Treasurer to invest the balance in the General Appropriations Fund at the close of the 1953-54 fiscal year in United States Government Obligation or Institution Bonds. You further ask whether we would consider this investment proper.

Section 12, Chapter 156, Laws of 1953, provides as follows:

"General Fund appropriations made for a specific fiscal year may not be used for paying obligations of any other fiscal year, and any unused balance of general fund appropriations remaining to the credit of any state office or department at the close of a fiscal year shall revert to the State General fund and be used to meet appropriations for the succeeding fiscal year except that all balances in funds appropriated in this act from School Equalization Funds shall revert to the School Equalization Fund."

This section, we believe without question, requires any balances to be placed in the General Appropriations Fund for the ensuing fiscal year.

There is, however, nothing to prevent the investment of any excess funds of the State, including monies in the General Fund not immediately needed for the operation of state government, after the transfer of such monies to the ensuing year's General Fund.

We wish to point out that under the Enabling Act, it is the primary duty of the State Treasurer to invest funds derived from Enabling Act lands. It would appear to us, that in investing any surplus in the General Fund, care must be taken to see that Enabling Act monies do not remain uninvested. In other words, Enabling Act monies cannot be used to meet the day to day expenses of the operation of the government, so that the General Fund balance may be invested.

In determining the type of security in which these funds should be invested, it should be borne in mind that the funds may be needed upon short notice, and therefore either the security should be of a highly liquid type or the Board of Finance should be satisfied that there is available other state monies for purchasing of such securities if money is needed in the General Fund.

As I am sure you understand, the State Treasurer is the only one authorized to invest these funds, and the State Board of Finance may only approve or disapprove any proposed investments by the State Treasurer.

By: Walter R. Kegel

Assist. Attorney General