

Opinion No. 54-6039

November 16, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Richard C. Grandi Business Manager New Mexico Western College Silver City, New Mexico

{*508} You have requested an interpretation by this office of that portion of Section 55-2802, N.M.S.A., 1941, which provides:

". . . the Board of Regents of the University of New Mexico at Albuquerque, the New Mexico College of Agriculture and Mechanic Arts near Las Cruces, the New Mexico School of Mines at Socorro, the New Mexico Military Institute at Roswell, the New Mexico Normal University at Las Vegas, the New Mexico Normal School at Silver City, the Spanish-American School at El Rito and the Eastern New Mexico Junior College at Portales, shall have discretionary power to establish and grant gratis scholarships by waiving fees for matriculation or tuition or both to bona fide resident students in their respective institutions and the number of such scholarships so established and granted shall not exceed two per centum (2%) of the preceding fall semester enrollment in their respective institutions and shall not apply to summer school sessions, Provided, that the president of their respective institutions shall select and recommend to the board of regents of their respective institutions, as recipients of such scholarships, such bona fide New Mexico resident students as in the opinion of such president are worthy and who possess good moral character, and satisfactory initiative, scholastic standing and personality."

Specifically, you want to know whether or not the 2% limitation imposed by the foregoing statute operates to limit the total number of scholarships operative in any one year to 2% of the enrollment of the previous Fall semester, or, whether the 2% limitation should be considered cumulative, and an additional 2% offered each year up to a maximum of 8%.

It is our opinion that it was the intention of the Legislature in enacting Section 55-2802, to limit the total number of scholarships granted pursuant to its provisions to a number equivalent to 2% of the previous Fall semester enrollment at a particular institution.

Had the intention of the Legislature been otherwise, we feel that it would have provided that scholarships not exceeding 2% of the preceding Fall semester enrollment should be granted each year to members of the Freshmen class, and that such scholarships should remain operative for succeeding years, through {*509} the Senior year of their recipients' college careers. You will observe that the statute makes no such provision; nor does the statute provide that the scholarships granted by it should be awarded to the members of any particular class.

It is our opinion that the Board of Regents of your Institution has discretionary power to establish, and to grant, in any one year a number of scholarships not exceeding 2% of the preceding Fall semester enrollment, to any students within your Institution, regardless of the academic class of such students, or their graduate or under-graduate status. It is apparent to us, however, that for any particular year the total number of such scholarships outstanding should not exceed the 2% statutory limitation.

We call to your attention the fact that this office held, in its Opinion No. 1646, issued May 18, 1937, that State Educational Institutions may not grant scholarships out of public funds, for the reason that Section 14 of Article 9 of the New Mexico Constitution provides that:

"Neither the state, nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation, or in aid of any private enterprise for the construction of any railroad; provided, nothing herein shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons."

We are of the opinion that Opinion No. 1646 was correct, and that the foregoing constitutional provision prohibits the granting of scholarships by State Educational Institutions to be paid out of public funds. Thus, such scholarships must be paid solely from funds acquired by such institutions from private endowments.

Trusting that the foregoing will answer your question satisfactorily, I am

By: Henry A. Kiker, Jr.

Assist. Attorney General