

Opinion No. 55-6273

September 6, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. E. B. Swope, Warden of the State Penitentiary, P. O. Box 1059, Santa Fe, New Mexico

We have your letter of August 2 in which you requested an opinion from this office on the following question:

If the Board of Directors of New Mexico State Penitentiary would pledge the sum of \$ 75,000.00 of its anticipated income from lands and permanent funds for a bond issue for the purpose of completing the new plant, can the said Board of Directors secure the funds, with the approval of the State Board of Finance, appropriated under § 7, Item 1, Chapter 287, Laws of 1955?

Section 7, Chapter 287, Laws of 1955, makes emergency appropriations "for purposes herein expressed" and provides that such appropriations can be used only upon the approval of the State Board of Finance.

Item 1 of § 7 provides for an emergency appropriation for the State Penitentiary and reads as follows:

"To be applied on operating expenses in the event the anticipated land income revenues are not realized."

It is the opinion of this office that this sum of money can only be used by your institution in case the revenues from you land, as anticipated when you submitted your budget, fails to meet the figure that you anticipated in this budget.

We are of the opinion that you could not pledge the sum of \$ 75,000.00 of the land income for this bond issue and then claim the \$ 75,000.00 set forth in § 7, Item 1, Chapter 285, Laws of 1955, unless the anticipated land income is not realized. The Legislature, by § 7, made an emergency appropriation and only by meeting the conditions set forth was this money to be used. The condition in the case of the State Penitentiary was a deficiency in the anticipated land income revenues.

Trusting we have answered your question, we remain

By Paul L. Billhymer

Assistant Attorney General