

Opinion No. 57-68

April 5, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,
Assistant Attorney General

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

QUESTIONS

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May the New Mexico Normal School at Silver City (New Mexico Western College) pledge its income received as beneficiary of State trust lands together with the income derived from buildings or other structures to be erected for the payment of interest and principal on bonds issued under the provisions of Chapter 177, Laws 1939, as amended, (§ 73-29-1 et seq., N.M.S.A., 1953)?

CONCLUSION

No. The only income which can be pledged for the payment of bonds issued under Chapter 177, Laws 1939, is the income from buildings or other structures to be erected. Income from trust lands may be pledged for bonds issued under the provisions of the statute cited hereafter. A joint pledge is not permissible.

OPINION

ANALYSIS

Chapter 177, Laws 1939, authorizes the boards of regents of the various educational institutions of the State to issue revenue bonds for the purpose of:

". . . purchasing, erecting, altering, improving, repairing, furnishing and/or the equipping of any in-come-producing dormitory, auditorium, dining hall, refectory, stadium, swimming pool, or any type of building, improvement or facility, or any group of buildings, improvement or facilities at and for the use of any such . . . state educational institution, . . ." § 1, Chapter 177, Laws 1939, as amended, (§ 73-29-1, N.M.S.A., 1953).

And the revenue to be pledged for the payment of these bonds is that derived from the charges to be made for the use of the buildings or other facilities purchased, erected or improved.

". . . and which bonds or other evidence of indebtedness shall irrevocably pledge for the prompt payment of the principal and interest thereof, as and when due and payable, the

net income from any such dormitory, auditorium, dining hall, refectory, stadium, swimming pool, or any type of building, improvement or facility, or any group of buildings, improvements or facilities for the purchase, erection, alteration, improvement, repair, furnishing and/or equipment of which such money is borrowed" § 3, Chapter 177, Laws 1939, (§ 73-29-3, N.M.S.A., 1953).

That bonds issued under the provisions of this chapter are to be retired from moneys derived as income from the buildings or structures sought to be erected or improved, and not that income plus income from trust lands as you indicate you desire to do, is further emphasized by the language of § 11, Chapter 177, Laws 1939, (§ 73-29-12, N.M.S.A., 1953).

"No obligation created hereunder shall ever be or become a charge or debt against the state of New Mexico, but all such obligations, including principal and interest, **shall be payable solely from the net income** derived from the building, facilities and improvements as in this act specified; . . ." (Emphasis Supplied).

Now Chapter 121, Laws 1949, does authorize the pledging of income from trust lands for the retirement of bonds issued under the provisions of this chapter. But Chapter 121, Laws 1949, is an act apart from Chapter 177, Laws 1939.

The requirements and procedure of these two acts relating to the issuance and retirement of bonds are different in several respects. Thus, we conclude that the authority contained in Chapter 121, Laws 1949, to pledge land income may not be combined with that contained in Chapter 177, Laws 1939, authorizing the pledging of building revenues, so that a pledge of both may be made to retire bonds issued under the provisions of the latter.

The 1957 Legislature amended Chapter 177, Laws 1939, above. However, the amendments do not change the result of this opinion.