

Opinion No. 58-228

December 4, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M Rosenthal,
Assistant Attorney General

TO: Mr. Albert A. Najjar, Administrative Assistant, Office of State Engineer, P. O. Box
1079, Santa Fe, New Mexico

QUESTION

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1. Are we allowed under the laws and regulations of the State of New Mexico to purchase a building by paying the owner's equity of \$ 58,000 and carrying the mortgage for \$ 52,000 for eight years at \$ 6500 per year plus interest?
2. Will the amendment to Act 12, Section 12 of the Constitution of New Mexico permitting greater diversity in the prudent investment of the State Permanent Funds, which just passed in the 1958 election, change in any way your Opinion No. 58-112 - question 3, "May the State Engineer's Office purchase a building presently leased by the said office from funds now available in the Rio Grande Improvement and Water Reservoirs Permanent and Income Funds by having the State Treasurer invest some of the Permanent Fund moneys in the Rio Grande Improvement Fund and the Water Resources Fund in the building

CONCLUSION

1. No.
2. No.

OPINION

ANALYSIS

Your present inquiry is one of a series in which your office manifests a strong desire to purchase real estate for your use in Roswell, New Mexico in which you propose to carry out your function. The building proposed to be purchased is presently rented by you for this purpose.

You are, of course, aware of the fact that the purchase you contemplate would have to be made in the name of the State of New Mexico and not in the name of the office of the State Engineer. No statutory authority exists permitting the State Engineer to purchase realty.

One of the most cogent reasons why your first question is answered in the negative and the only one we will cover in this opinion concerns the constitution of the State of New Mexico. Without citing the exact phraseology, Article IX, Section 7 of the Constitution recites certain reasons why debt may be contracted by or on behalf of the State of New Mexico. Section 8 of the same article specifically prohibits the contraction of a debt other than is recited in Section 7. The purpose for which you propose to contract debt is not included in Section 7. Hence, unequivocally, this office advises you in the negative.

Of related interest are the cases: *State Office Building Commission v. Trujillo*, 46 N.M. 29 and *Bryant v. State Office Building Commission*, 46 N.M. 58, both of which indicate the views of our Supreme Court on Article IX, Section 7 of the Constitution.

As to your second question we would like to indicate to you the legislative act passed by the 1957 Legislature which is based on the constitutional amendment you refer to. We refer to Chapter 179 of the Laws of 1957. Section 9 specifies the securities and investments within which the State Investment Council may manifest its "prudence". Without detailing the several classifications of investments so authorized this office advises you that in none of these categories can such an investment as you describe be included. Hence, our second negative answer.