

Opinion No. 12-960

December 3, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. O. N. Marron, State Treasurer, Santa Fe, N. M.

STATE PERMANENT SCHOOL FUND.

State Treasurer may deposit money in banks until legislature can act.

OPINION

{*117} Your letter of November 26th has not been sooner answered on account of press of other matters which has made it impossible to give it earlier attention. In that letter you state that various sums of money belonging to the permanent school fund are on deposit in different banks at varying rates of interest from 4 6-10 up to 5 1-4, such deposits having been made under the provisions of Section 36 of Chapter 104 of the Laws of 1907; and that you have recently received from the United States Government and credited to the five per cent proceeds of "U. S. Land Sales Permanent Fund" as part of the permanent school fund, the sum of \$ 10,587.31. In view of the fact that all of Chapter 104 has been repealed by Section 79 of Chapter 82 of the Laws of 1912, and of the further fact that Section 7 of Article 12 of the Constitution directs that the principal of the permanent school fund shall be invested in bonds of the state or territory, or of any county, city, town, board of education or school district therein, you desire to know whether you have any discretion as to the investment of this last amount received and whether it is necessary to take any action relative to the funds now on deposit in banks as aforesaid with a view to investing that money in accordance with the provisions of the constitution above referred to.

As to the money last received, there now appears to be no statutory direction for its disposition, unless it could be found in the general statute in Section 255 of the Compiled Laws of 1897 which was amended in some unimportant particulars in 1907. I cannot believe, however, that this is applicable to moneys belonging to the permanent school fund, and that the controlling provision is the one in the constitution. It is not perfectly clear that that provision is self-executing so that you must act under it in advance of any legislation as to the details. Without deciding that question, however, my advice to you as a practical matter is for you to arrange for the deposit of the money last received at the best rate of interest which you can get, which undoubtedly will be higher than interest which you could obtain by investing in bonds, and that you continue the present bank deposits made under the law of 1907, until the legislature can act, and that you specifically call legislative attention to this subject as one requiring action in harmony with the requirement of the constitution. In the same section of the constitution it is provided that by a vote of three-fourths of the members of each house of the legislature, funds may be invested in other interest-bearing securities, and authority

might be given to you as treasurer to accept from the banks which will pay higher rates of interest than state or municipal bonds {**118*} usually bear, something in the nature of interest-bearing securities which will enable you to get the higher rate of interest.