

Opinion No. 20-2620

June 23, 1920

BY: O. O. ASKREN, Attorney General

TO: Honorable F. O. Blood, President, Board of Regents, New Mexico Normal University, East Las Vegas, New Mexico.

Expenditures in Excess of Appropriations in Construction of Addition to State Normal University.

OPINION

Your letter of the 17th in regard to financial matters in connection with the building of the new addition to the Normal University has just been received and I hasten to reply.

You state that the \$ 75,000.00 appropriated by Chapter 107, Laws of 1917, for the new addition to the University, is not sufficient for the purpose, and that the plans for the new building contemplate an expenditure of one hundred forty-eight thousand dollars, and ask two questions.

1. May the Board of Regents let a contract for the construction of a building to cost the larger sum mentioned, using the amount appropriated in so far as it will go, and trusting to a future appropriation by the legislature to pay for the remainder.

Section 5158, Code 1915, prohibits the making of any contract by any board, officer, body or agency, or any member thereof, empowered to expend public moneys, or to contract the expenditure thereof, in excess of the terms of the law authorizing such expenditure, and, in our opinion, this section would prohibit the making of a contract for the erection of a building which would cost in excess of the amount appropriated therefor by the legislature.

We are of the opinion, however, that the Board of Regents might give their individual notes or some other individual security for the payment of the balance in excess of the \$ 75,000.00 appropriated, and depend upon a future appropriation to reimburse them for any expenditure that might be made by them.

This last procedure was followed by a former Board of Regents of your institution, as well as by the Board of the Military Institute of Roswell, and in both cases, the legislature appropriated sufficient to take care of the excess which was guaranteed by the Regents individually. Of course, if no appropriation was provided, the individual members of the Board would not be able to compel the state to reimburse them.

2. May the Board contract for the erection of such part of the building as can be completed for the amount appropriated, leaving the remainder uncontracted for, and paying the amount appropriated out of the present appropriation?

If the contract provides for a complete section or part or wing of the building, which, when finished, at a cost not in excess of the amount of the appropriation, to-wit, \$ 75,000.00, would be ready for occupancy and use for the purpose originally intended and provided for in the Act of appropriation, then the Board may so contract, but if the contract contemplates only an incomplete or unfinished building or part or wing thereof, which would not be available for use without the expenditure of an amount in excess of the appropriation, then, in my opinion, such a contract would be in violation of the section of the statute above mentioned. In other words, a completed, finished wing, for and ready for use, but built so that it may form a part of a larger building, which may be subsequently erected, would not be within the prohibition of the statute, but any contract which did not provide for a building which would be ready for use when completed at a cost of \$ 75,000.00 would be invalid and the members of the Board who were parties to such an agreement would be subject to the penalty of the law.