

Opinion No. 31-278

September 22, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. J. D. Atwood, Attorney at Law, Roswell, New Mexico.

{*106} Your letter of September the 19th requests, in effect, an opinion as to whether or not moneys received from every source with the exception, of course, of that fund known as Cadet Fund by the Board of Regents of the New Mexico Military Institute are public funds.

If such funds are public funds, it will be necessary for the Treasurer of the Board of Regents to comply with the requirements of Section 112-116 of the 1929 Code, which provides, in part:

"Bonds of municipal treasurers and treasurers of any board in control, shall be in a sum equal to 20% of the public moneys received by such treasurer during the preceding fiscal year."

In checking the statutes, I find that there is no specific provision for the bond of the treasurer of the Board of Regents of the New Mexico Military Institute, as is the case regarding treasurers of other {*107} institutions, at least in some instances. We find also, in checking the statutes, that Section 130-1314, in part at least, is as follows:

"Said tuition shall be fixed and made payable as said Board of Regents shall direct, collected by the officers of each institution and accounted for as other funds of such institutions."

Prior to that provision, it mentions specifically, among others, the New Mexico Military Institute. It would seem, from such provision, that the law contemplates that that money received by a Board of Regents for tuition in the particular institution effected must be kept and accounted for as are all other funds of the institution.

It seems to us that the entire matter hinges upon the meaning of the word public moneys as used in Section 112-116, above quoted.

It has been difficult to find a specific definition of public moneys, for most of the books, in treating the matter, are referring specifically to certain statutes in certain states. In Annotated Cases in a note on page 1239 of Annotated Cases 1916 B, we find the following definition: "The public moneys of the United States are the revenues of the United States from all sources.", which is a quotation from *Coudeit vs. United States*, 175 U.S. 178. Further in the same note, we find the definition of public moneys as given by a Michigan statute, which statute has been quoted by several courts and approved as a fair definition of the meaning of public moneys.

"All moneys which shall come into the hands of any officer of the state or of any officer of any county or of any township, school district, highway district, city or village, or of any other municipal or public corporation within this state pursuant to any provision of law authorizing such officer to receive the same."

It seems to us that the definition of the Michigan statute would be one that would have some effect upon the courts of this state in arriving at the true meaning of the word public moneys, and consequently, using that definition together with the one given to the word public moneys of the United States by the Supreme Court of the United States, we must conclude that those moneys received by your institution for tuition are public moneys.

This conclusion is strengthened greatly by the provisions of both the 1929 and the 1931 Session Laws in the general appropriation acts thereof, wherein, under New Mexico Military Institute, we find several definite appropriations and then the words, "provided that non-resident students attending the New Mexico Military Institute shall pay to such institution not less than the actual average cost per student for each scholastic year and that in addition to the above institutional receipts, etc., and other funds belonging to the institution are hereby appropriated, etc."

From all of the above, it is apparent that the Legislature intended to protect all of the moneys coming into the hands of the various boards of control of state institutions and that the proceeds or the receipts should be fully and accurately accounted for by the officers of such boards as public funds. It is also apparent that the tuition paid to the Board of Regents of the New Mexico Military Institute by the students of that institution are specifically appropriated for the use of the institution, and by reason of such appropriation, if for no other reason, become a part of the state funds upon their payment and are as much a payment from the State Treasurer to the institution as if same were deposited by your Board of Regents with the State Treasurer and then afterwards paid out according to the provisions of the appropriations act.

We realize that the carrying of the bond mentioned by you is a burden to the school, but because of the matters herein mentioned we are led to the conclusion above stated.