

Opinion No. 42-4198

December 3, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mrs. Dorothy W. Miller, Secretary State Board of Cosmetologists 144 East Marcy Street Santa Fe New Mexico

{*288} We have your letter of November 24, 1942, in which you ask an opinion of this office as to whether or not the State Board of Cosmetologists has the legal right to invest a part of its balance on deposit with the State Treasurer in United States War Bonds.

I have examined with care Chapters 221 and 229, Laws of 1937, creating the Board of Cosmetologists and regulating this industry. Nowhere in either of these acts is authority given to the Board of Cosmetologists to invest its funds. Thus the general law with respect to public finance will prevail.

Section 112-102, New Mexico statutes Annotated, 1929 Compilation, provides in part that:

"Thirty days from the taking effect of this act all public moneys in the custody or under the control of any state official or agency obtained or received by any such official or agency from any source, except as hereinafter in section 23 (112-123) provided, shall be paid into the state treasury."

The exception noted in Section 23 (Section 112-123, New Mexico Statutes Annotated, 1929 Compilation) is as follows:

"The several educational, charitable and penal institutions of the state shall be exempt from the provisions of section 2 (112-102) of this act;"

The only statute, to the knowledge of the writer, authorizing investment of excess funds in the hands of state agencies is Section 112-126, New Mexico Statutes Annotated 1929 Compilation, which is in part as follows:

"If at any time the state treasurer, or the treasurer of any county, city or town or board in control, shall have on hand more money than can be divided equitably and ratably between depositories qualified as in this act provided, such treasurer may, with the approval of the proper board of finance, temporarily invest such excess funds in United States bonds or treasury certificates under such rules and regulations as may be prescribed by the state board of finance."

In view of the foregoing, it appears to me that the State Board of Cosmetologists must deposit its funds with the State Treasurer. As its funds can not "be divided equitably and

ratably between depositors", it is not a "board of control", as contemplated by Section 112-126, supra, so that this section does not authorize it to invest its excess funds.

It is therefore my opinion that the State Board of Cosmetologists cannot invest a part of its balance in United States War bonds.

By ROBERT W. WARD,

Asst. Atty. General