

Opinion No. 43-4237

February 16, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. R. H. Reece, President, New Mexico School of Mines, Socorro, New Mexico

We are in receipt of your letter of February 6, 1943, asking whether or not your institution may refund a proportionate part of the unused tuition and other fees upon the induction of a student into military forces.

Your attention is directed to Section 55-2802 of the 1941 Compilation providing for the tuition and matriculation fees of the School of Mines and other educational institutions in this state.

This section provides in part, for a matriculation fee of \$ 5.00; a resident tuition fee of \$ 20.00 a year and a non-resident tuition fee of \$ 50.00 a year, and further provides that:

"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."

By the appropriation act of 1941, being Chapter 212, Section 2 of the Laws of 1941, the appropriation of your school was made contingent upon the charging of a non-resident student not less than \$ 150.00 per year, based on a nine month school year.

It will be seen that under both of these provisions the tuition is based on a full school year. Further by the provision above quoted, it is made discretionary with the board of regents how they collect this sum. Thus, as is commonly done, this tuition is made payable by semester or quarter. The board of regents could, in their discretion, make the tuition payable monthly, weekly or daily as long as the amounts collected were the proper proportion of the yearly fee.

In view of the foregoing it is my opinion that the board of regents can, in its discretion, provide rules whereby the unused portion of the tuition may be refunded.

However, this would not be true of matriculation fees as Section 55-2802, supra, requires the various boards of regents to charge this \$ 5.00 fee for each student upon enrolling. Thus, it appears to be a fee for the enrolling of the student and so once the student is enrolled it could not be refunded.

Trusting the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General