

LESLIE C. HARDY- Originator

September 21, 1960

Dr. J. Byron McCormick
Adviser to the Board of Regents
University of Arizona
Tucson, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Dr. McCormick:

This letter will reply to your letter of August 3, 1960, and the conversation we had on September 15th, with respect to the deposits of so-called local funds which are under the control of the Board of Regents as provided by A.R.S. § 35-149 D.

You enclosed with your letter of August 3, 1960, an exchange of letters, dated July 13, 1960 and July 27, 1960, between Mr. W. D. Burns, Administrative Vice President and Cashier of the First National Bank of Arizona, and Mr. William R. Matthews, President of the Board of Regents.

A.R.S. § 35-149 provides:

* * * * *

"D. The provisions of this chapter shall not apply to monies received by the university and state colleges for the subsistence of dining halls, canteens, bookstores, student activities, or to federal funds or private funds of students received by state educational institutions, or to private funds of patients or inmates of state institutions, when such funds deposited with an officer of such an institution are declared not to be state monies."

Because the above quoted provision exempts the funds therein described from the provisions of Title 35, Chapter 1, Arizona Revised Statutes, it seems quite evident that it was the intention of the Legislature to place the control, as well as the investment and deposits of these funds, within the authority and discretion of the Board of Regents.

Confirmatory of this intention of the Legislature is A.R.S. § 35-521. Paragraph 4 of that section provides that "public

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monies" includes "state monies or subdivision monies, or both." Paragraph 1 of that section provides that "subdivision" means any county, city or town, which by terms of limitation excludes the Board of Regents.

In addition, A.R.S. § 35-302 should be considered. That section provides:

"The phrase "public money" as used in this article includes bonds and evidence of indebtedness, and money belonging to, received or held by, state, county, district, city or town officers in their official capacity."

The section last quoted also by terms of limitation excludes the Board of Regents and confirms the authority delegated to the Board of Regents by A.R.S. § 35-149 B.

Valley National Bank of Phoenix v. First National Bank of Holbrook (1950) 35 Ariz. 210, 320 P.2d 619, relating to the constitutionality of the statute providing for the deposit of public monies, does not seem to be in point on the question of the deposit or investment of such funds by the Board of Regents. Title 35, Article 2, Arizona Revised Statutes, relating to the deposit of state and subdivision monies, defines "state monies" as all monies in the treasury of the state and subdivision monies are defined as monies in the treasury of a subdivision, which is defined in A.R.S. § 35-321 as a county, city or town.

See also Pinal County v. Harmons (1926) 30 Ariz. 36, 243 Pac. 919, to the effect that the Depository Law (Title 44 Civil Code of 1913, now incorporated in A.R.S. Title 35, Chapter 2, Article 2,) is confined to prescribing the duties and rights of the state and county treasurers in the handling and disposition of the public monies in their custody, and does not undertake to change or modify the law prescribing the duties of other officers who receive public funds and as to how they should keep such funds.

It is, therefore, the opinion of the Attorney General that the Board of Regents does have the authority to invest the uncommitted surplus funds described in A.R.S. § 35-149 D in interest bearing or dividend paying securities, or in time certificates of deposit of banks or other financial institutions, if the earnings thus received are expended in the same manner as the principal of these funds are expended for the support and maintenance of the Universities and State College under the provisions of A.R.S. §§ 15-743 and 15-744.

Very truly yours,

WADE CHURCH
The Attorney General

LESLIE C. HARDY
Chief Assistant Attorney General 60-136-L

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