

OPINION
62-244

August 7, 1962 (OPINION)

STATE LAND DEPARTMENT

RE: Loans Secured by Indian Owned Real Estate

Forwarded herewith is file containing various documentation in regard to proposed farm loan to Arthur Bendickson and Annie Twiggs Bendickson. The question presented is whether with proposed authorization, the loan applicants can obtain a loan from the State Land Department on these premises.

As quoted in a letter of May 16, 1962, from this office to the Land Commissioner, 25 U.S.C. 483 states in part:

* * *Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceedings, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed."

In regard to delegation of such authority to the Commissioner of Indian Affairs or his authorized representative we quoted 25 CFR 121.52 providing:

The Commissioner of Indian Affairs or his authorized representative may approve mortgages or deeds of trust on any individually owned trust or restricted land whenever such lands under any law or treaty may be sold with the approval of the Secretary of the Interior or his duly authorized representative.* * *."

Looking then to the laws of this state, we hereinafter quote sections 15-03-05, 15-03-06 and 15-03-0 of the North Dakota Century Code, which are the basic statutory provisions under which farm loans are made by the Land Commissioner's office:

15-03-05. ONE-THIRD OF PERMANENT FUNDS TO BE INVESTED IN FARM LOANS - EXCEPTION. At least one-third of the whole amount of the several permanent funds, as computed by the commissioner of university school lands at the end of each fiscal year, shall

be invested in first mortgages on cultivated farm lands in this state if there is a sufficient demand for investment in farm loans. First mortgage loans on farm lands shall be made only in accordance with the provisions of this chapter."

15-03-06. FARM LOANS - PROCEDURE IN NEGOTIATING AND COMPLETING LOANS. An applicant for a farm loan shall submit an application to the commissioner of university and school lands stating the amount he wishes to borrow and giving other information required as to the land to be mortgaged and the character thereof. The application shall be made on a form prepared and furnished by the commissioner, and shall be accompanied by an appraisal of the land signed by at least two members of the county board of appraisers, and by such other information as may be required by the commissioner. The application and appraisal shall be presented to the board of university and school lands for consideration. If the application is accepted, the commissioner shall notify the applicant in writing, stating the amount that will be loaned. If the amount is satisfactory to the applicant, he shall furnish an abstract of title. The attorney general shall examine the abstract of title and ascertain the amount necessary to release each encumbrance. The applicant shall execute and deliver a note and mortgage in the amount of the loan, and his wife or her husband, as the case may be, shall join in the execution thereof. The State of North Dakota shall be designated as mortgagee and payee. The mortgage shall be recorded and the abstract of title shall be continued to a date subsequent to the recording thereof. The attorney general shall certify, in duplicate to the commissioner and the state auditor, as to the condition of the title and the amount necessary to release encumbrance, and shall deliver the certificates, abstract, note and mortgage to the state auditor."

15-03-07. LIMITATIONS ON FARM LOANS. Farm loans secured by a first mortgage shall be made only upon farm land in this state, and only to persons who are actual residents of this state. Loans shall not be made to any person in an amount exceeding twenty-five thousand dollars and shall not be made when the appraised valuation of the land is less than ten dollars an acre."

After due and careful consideration of the above provisions of the state and federal laws involved, it is our opinion that when the conditions of said statutes have been met there will be no legal objection to completion of the proposed loan here contemplated.

LESLIE R. BURGUM

Attorney General