

**OPINION
66-20**

July 7, 1966 (OPINION)

Mr. K. W. Peterson, State's Attorney

Grant County

RE: Bonds - Sinking and Interest Funds - Investment

This is in reply to your letter of June 30, 1966, in which you refer to your letter of May 24, 1966. We are sorry for the delay in answering. You ask the following question:

"Has a School Board the authority with a population over 1,000, to authorize investment of its sinking fund of moneys not needed to make payment of its annual payment of principal, accrued interest, and a premium of not to exceed two (2) years interest on such bonds, as provided in Section 21-03-43, 1965 Pocket Supplement of the North Dakota Century Code, in U.S. Treasury Bills or in Certificates of Deposits in State or National Banks?"

Section 21-03-40 of the North Dakota Century Code, as amended, provides that in the case of a school district, among other municipalities, having a population of more than one thousand the treasurer thereof shall be custodian of the sinking funds of the district.

Section 21-03-43 of the North Dakota Century Code governs the investment of the sinking funds. This section provides:

"INVESTMENT OF SINKING FUNDS. - Taking care that enough cash is retained always in sinking fund to provide for annual payments of principal and interest, the surplus, if any, may be loaned or invested under the direction of the proper governing body as follows:

1. In the outstanding bonds for the payment of which the sinking fund is required, at any price not exceeding the principal, accrued interest, and a premium of not to exceed two years' interest on such bonds;
2. In interest-bearing bonds of the United States, or of the state of North Dakota, or of any municipality as defined in section 21-03-01;
3. In conformity with the provisions of chapter 21-04.

"Investments of the class specified in subsection 2 shall continue a part of the sinking fund and shall be held in the custody of the treasurer of the municipality. Bonds representing such investments may be sold by the governing body at any time, but the money received shall remain, until used, a part of the sinking fund."

Chapter 21-04 governs depositories of public funds. It provides for the selection of depositories of school districts, among other municipalities. This office has previously indicated that certificates of deposit may be purchased from those banks which the school district or other municipality has designated as an official depository. Since section 21-03-43 permits investments of sinking funds in conformity with the provisions of chapter 21-04 and since that chapter permits the purchase of certificates of deposit from banks designated as official depositories in accordance with chapter 21-04, we believe the sinking funds may be invested in such certificates of deposit issued by banks which have been named as official depositories by the school district. In this connection we would note section 21-04-18 limits the amount of interest which can be paid on public funds to four percent on time deposits. We understand certificates of deposit are classified as time deposits. We would emphasize the certificates of deposit can be purchased only from banks which have been designated as official depositories for the school district funds under the provisions of chapter 21-04.

Insofar as treasury bills are concerned, our statutes contain no definition of same. They have been defined as "a bill of exchange drawn on the United States and issued weekly by the treasury and payable in 91 of 182 days without interest and profit is difference between face value and discount price set by competitive bidding. See U.S. v. Manufacturers Hanover Trust Co. DCNY 240 F. Supp. 867, 897 (1965). See also Section 754(a) of the USCA which authorizes the United States Secretary of the Treasury to issue "Treasury bills on a discount basis and payable at maturity without interest."

A "bond" is defined by Webster's New Twentieth Century Dictionary (2nd ed.) as: "In finance, an interest-bearing certificate issued by a government or business promising to pay the holder a specified sum on a specified date." This corresponds with the provisions of section 21-03-43(2) permitting investment in "interest-bearing bonds of the United States" etc. Since a treasury bill is not interest bearing, according to the above definition, it would appear investment in same is not permitted under the provisions of section 21-03-43.

It is therefore our opinion that sinking fund moneys may be invested in certificates of deposit of state or national banks which have been selected as official depositories of a school district in accordance with the provisions of Chapter 21-04 of the North Dakota Century Code. It is our further opinion that under the present statutes sinking fund moneys may not be invested in United States Treasury bills since they do not constitute "interest-bearing bonds of the United States."

HELGI JOHANNESON

Attorney General