

**OPINION
67-246**

September 1, 1967 (OPINION)

Mr. Walter Christensen

State Treasurer

RE: State - Real Estate Bond Funds - Transfer to General Fund

In your letter of August 23, 1967, you request the following opinion:

Therefore, we respectfully request an opinion allowing the transfer of the amount of \$70,045.30 to the General Fund with authorization to pay from the General Fund the amount due if such bonds are presented for payment; or authorization to transfer that portion not deemed necessary to be retained by this Office for payment."

The applicable statutes of the North Dakota Century Code involved in this question are:

Section 54-30-29, as amended, which states:

REAL ESTATE BOND FUNDS. The real estate bond funds on deposit with the state treasurer shall be maintained in the sums needed to pay outstanding valid enforceable real estate series bonds of the state of North Dakota and lawful interest thereon. All money in said funds not needed for such bonds and interest shall upon the effective date of sections 54-30-29 through 54-30-33 be transferred by the state treasurer to the general fund in accordance with the provisions of subsection 2 of section 54-30-11 of the North Dakota Century Code."

Section 54-30-05, that portion stating:

* * * They shall be payable in not less than ten nor more than thirty years from the date of the issue, * * *."

Section 54-30-07, that portion stating:

* * * Each bond and coupon must be presented at the office where the same is payable within six years from the date of its maturity."

Section 54-30-15, that portion stating:

* * * No other disposition by appropriation, or otherwise, ever shall be made of the money in said funds until the bonds are paid fully or until the time limit provided by law for the payment thereof has expired, * * *."

It is stated in your letter that there are three outstanding bonds, one was issued April 1, 1921, and the other two were issued April 1, 1925. According to section 54-30-05, quoted above, the maximum date which these would become payable would be thirty years from date of

issue. This would make the one payable on April 1, 1951, and the other two payable on April 1, 1955, assuming that they had the maximum time as to maturity. As these bonds were not presented for payment within six years from the date of maturity, as required by section 54-30-07, they are no longer enforceable obligations.

That these sections quoted above are enforceable as part of a contract against the holder of the bonds is well established in the case of Catholic Order of Foresters v. State, 271 NW 670, on page 673:

It is conceded that these bonds are valid obligations of the State of North Dakota. It is further conceded that all of the provisions of chapter 154, supra, pursuant to which they were issued, are as much to be considered terms of the bonds as though such provisions were stated on the faces thereof. (Citations omitted) It follows that the question here is purely and simply one of contract. Whether profit shall be made or loss shall be suffered by either the maker or the holders of these bonds is wholly immaterial. The rights and obligations of the parties are defined by the contract in the bond, including, of course, the statute pursuant to which the bond was issued. In this respect these bonds differ not at all from any other negotiable instruments."

Section 54-30-29, as amended, provides in part:

The real estate bond funds on deposit with the state treasurer shall be maintained in the sums necessary to pay outstanding valid enforceable real estate series bonds * * *." (Emphasis supplied)

As the statute of limitations has run, these bonds are not valid enforceable real estate bonds and the entire amount of \$70,045.30 can be transferred to the General Fund.

Therefore, it is our opinion that these bonds are no longer enforceable, and the total amount in the Real Estate Fund can be transferred to the General Fund pursuant to the authority granted by section 54-30-29 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General