

**OPINION
68-115**

May 22, 1968 (OPINION)

Mr. H. L. Thorndal, Jr.

State Examiner

RE: Interest - Insurance Costs - Federally Guaranteed Loans

This is in response to your letter in which you refer to an earlier opinion which concluded that the one-half percent of the insurance costs making a total of seven and one-quarter percent comes within the prohibitions of section 47-14-09 of the North Dakota Century Code.

You then ask if the transactions mentioned in sections 6-03-47, 6-03-47.1, 6-03-48 and 6-03-49 are excepted from the provisions of section 47-14-09 of the North Dakota Century Code.

Section 6-03-50 of the North Dakota Century Code provides as follows:

EXCEPTIONS FROM RESTRICTIVE PROVISIONS. No law of this state requiring security upon which loans or investments may be made, or limiting the making of loans to shareholders or members of the lender, or prescribing the nature, amount or forms of such security, or prescribing or limiting interest rates upon loans or investments, or prescribing or limiting the period for which loans or investments may be made, shall be deemed to apply to loans or investments made pursuant to sections 6-03-47, 6-03-48, and 6-03-49."

Section 6-03-47 of the North Dakota Century Code provides as follows:

LOANS AND INVESTMENTS INSURED OR GUARANTEED IN ANY MANNER IN PART OR IN FULL BY THE UNITED STATES OR ANY INSTRUMENTALITY THEREOF, OR BY THIS STATE OR ANY INSTRUMENTALITY THEREOF. Banks, savings banks, trust companies, the Bank of North Dakota, building and loan associations and insurance companies are authorized:

1. To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are insured by or guaranteed in any manner in part or in full by the United States or any instrumentality thereof or by this state or any instrumentality thereof, or for which there is a commitment to so insure or guarantee, or for which a conditional guarantee has been issued, and to obtain such insurance or guarantee; and
2. To make any loans secured by liens on real property or on a leasehold therein which is insured by or guaranteed in any manner in part or in full by the United States or any instrumentality thereof, or by this state or any instrumentality thereof, or for which there is a commitment to so insure or guarantee, or for which a conditional

guarantee has been issued, and to obtain such insurance or guarantee."

Section 6-03-48 of the North Dakota Century Code provides as follows:

INVESTMENT IN NOTES OR BONDS SECURED BY INSURED MORTGAGE - DEBENTURES OF FEDERAL HOUSING ADMINISTRATOR AUTHORIZED. It shall be lawful for banks, savings banks, trust companies, building and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries, the state of North Dakota and its political subdivisions, institutions, and agencies thereof, and all other persons, associations, and corporations subject to the laws of this state to invest the funds and moneys in their custody or possession eligible for investment in notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, in debentures issued by the federal housing administrator, and in securities issued by national mortgage associations."

Section 6-03-49 of the North Dakota Century Code provides as follows:

FEDERAL HOUSING ADMINISTRATOR - INSURED BONDS AND NOTES - DEBENTURES - SECURITY FOR DEPOSITS. Notes and bonds issued and debentures issued by the federal housing administrator shall be eligible as collateral to secure the deposit of public or other funds, as deposits with any public official or department, and for investment of capital, surplus, reserve, or other funds where such investment is limited to designated securities."

It appears that the legislature made some exceptions by specifically referring to certain transactions mentioned in the above cited sections.

It is therefore our opinion that those transactions which come within the provisions of sections 6-03-47, 6-03-48 and 6-03-49 would be exempted from the provisions of section 47-14-09. It is observed that the transactions mentioned in section 6-03-47.1 are not specifically included in the exception found in section 6-03-50. The transactions mentioned in section 6-03-47.1 must rest on the specific provisions recited therein.

HELGI JOHANNESON

Attorney General