

**OPINION
69-515**

December 12, 1969 (OPINION)

Mrs. Bernice Asbridge

Treasurer

State of North Dakota

RE: Trust Companies - Deposit of Securities - Acceptable Securities

This is in response to your letter of December 3, 1969, wherein you request an opinion regarding a certain offer of security pursuant to section 6-05-04 of the North Dakota Century Code. You submit the following in your letter:

This letter is in regard to 'Surety deposit investments required' as set out in section 6-05-04 - subsection 6 of the North Dakota Century Code, which states in part - the securities so deposited shall be:

6). United States Treasury Bills or Notes or an agency thereof.

Does the wording 'U. S. Treasury or Notes or an agency thereof', refer to and include United States Department of Agriculture Farmers Home Administration Promissory Notes with attached Insurance Endorsement? Is this paper a proper security to be deposited in the state treasurer's office by an organized corporation under the aforementioned section of the North Dakota Century Code?" (Underscoring yours.)

You also enclosed a Xerox copy of a sample note and the insurance endorsement for our inspection.

In the first instance we would note that the paper which you enclosed is a promissory note (insured loan), not of the Farmers Home Administration but rather a note of borrowers under the program administered by the United States of America, acting through the Farmers Home Administration. As such, it is clear that the notes submitted for security do not fall within any category enumerated in the above statute, including subsection 6 thereof. The pertinent portion of the statute in question, as you have stated, "United States Treasury Bills or Notes or an agency thereof", refers to "Bills" or "Notes" of the United States Treasury or "Bills" or "notes" of an agency of the United States. It seems impossible to lend any other interpretation to that portion of the statute which is explicit in its meaning and it would, therefore, appear that paper held by other governmental agencies upon which the party of primary liability is not an agency of the government as referred to in the statute, would not be within the contemplation of the statute.

Upon examination of the furnished copy of offered security we would also note that the same does not have any acceleration clause excepting upon default of the maker of the note, which in this instance, appears to be a private individual, and that only the

government shall have the right to declare all or any part of the representative amount due and payable. In this connection we would note section 6-05-04.1 of the North Dakota Century Code, as amended, which provides for a right of action against such deposits of security:

RIGHT OF ACTION AGAINST DEPOSIT. The security deposited with the state treasurer as provided in section 6-05-04 shall be held by the state treasurer for the benefit of any person making any transfer or deposit of money or property in the state of North Dakota to or with any trust company and who shall suffer loss or damage because of the breach of any trust committed by such trust company. Any judgment obtained by any such person from any court of competent jurisdiction may be satisfied from the security deposited with the state treasurer." (Emphasis supplied.)

It would appear that the nature of protection offered to depositors under the aforementioned statute would contemplate a deposit required by section 6-05-04, which would be readily convertible to liquid assets. Obviously paper of the type submitted for our inspection would fail in this respect inasmuch as it provides for a thirty-three year repayment period.

In view of the foregoing observations, and in direct reply to your question, it is our opinion that the type of paper which is the subject of your inquiry would not constitute an acceptable security under the provisions of section 6-05-04 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General