

**OPINION
70-29**

November 12, 1970(OPINION)

Mr. G. W. Ellwein
Commissioner
Department of Banking and Financial Institutions

RE: Banks - Municipal Development Act Bonds - Limits on Purchase

This is in response to your letter in which you call to our attention to Section 40-57-10 and then ask for an opinion whether or not banks organized and chartered under the laws of this state may purchase revenue bonds issued under the provisions of Chapter 40-57 from more than one issuer as long as each purchase does not exceed 5 percent of their capital. To help clarify the question presented, you give the following example:

"5 percent of capital is \$5,000.00. Can purchase of Revenue Bond A in amount of \$5,000.00 and Revenue Bond B in amount of \$5,000.00 be made at the same time?"

You also ask for an opinion whether or not a bank chartered and organized under the laws of this state may legally purchase municipal industrial bonds of another state. Section 40-57-10 as found in Chapter 40-57 which relates to the issuance of municipal projects, also authorizes the issuance of revenue bonds. Said section as is material here provides as follows:

"Banks chartered in this state may purchase the revenue bonds issued under the provisions of this chapter in an amount not to exceed 5 percent of their capital."

It is noted that the authorization is limited to 5 percent of the bank's capital. The 5 percent limitation is not per purchase or vestment. It is on the capital of the bank. In this respect, the limitation found in Section 40-57-10 is substantially different than the one found in Section 6-05-59 which places a limitation that the amount the bank may loan to one person, company, or firm. In the latter instance the limit of 25 percent of the surplus capital is with reference to a loan to a person, corporation or firm and is not governed by the total amount of individual loans made by the bank to other persons.

In addition to the specific language we would also have to note that if the limit of 5 percent applied only to each type of bond issued, the bank could under a certain given instance involve all of its capital in investments of this kind which would be in violation of the general loan limitations imposed upon banks. For example, if the bank were to invest its funds up to 5 percent of its capital in each type of revenue bonds issued and revenue bonds were issued by 20 different issuers, the bank would have committed 100 percent of its capital, which would be contrary to banking concepts and banking laws.

It is therefore our opinion that the provisions of Section 40-59-10 limit the total purchase of revenue bonds of any bank organized under the provisions of the North Dakota laws and chartered thereunder to 5 percent of the bank's capital.

The case of Security State Bank of Wishek v. State of North Dakota doing business as the Bank of North Dakota decided by the North Dakota Supreme Court on October 30, 1970, indicates that because the limitation of the bank was contained in Section 40-57-03 without any similar reference or provision in Title 6, might have caused the mistake in law. It would be recommended that this provision be incorporated in the appropriate provision in Title 6 of the North Dakota Century Code or at least brought to the attention of the codifier so an appropriate cross-reference can be made.

As to the second question, we are assuming that your reference to municipal industrial bonds refers to the revenue bonds authorized under Chapter 40-57. The authorization for state banks is for the purchase of revenue bonds issued under the provisions of Chapter 40-57. Because of the current language employed

and the necessary implications derived therefrom, the authorization to purchase such revenue bonds is limited to such bonds issued by the cities within the State of North Dakota and under the provisions of Chapter 40-57. It would appear somewhat difficult to accept the concept that a bank could purchase industrial revenue bonds issued by a city in a state other than North Dakota but would have to have special permission to purchase such bonds issued by cities in the State of North Dakota.

It is therefore our opinion that banks organized and chartered under the laws of the State of North Dakota may not purchase municipal industrial bonds (revenue) issued by a city in another state. The purchase of municipal industrial revenue bonds is authorized only in case where same are issued under authority of Chapter 40-57 by a municipality of and within this state.

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