

**OPINION
71-298**

December 27, 1971 (OPINION)

Mr. John O. Garaas

State's Attorney

Cass County

RE: School Districts - Funds - Investment

This is in response to your letter in which you ask for an opinion whether or not a school district can place its funds with a savings and loan association in the state of North Dakota. You also call our attention to section 21-04-05 and to section 7-04-09. You further state that the question is prompted as the as the result of an audit by the State Auditor's Office involving a school district in Cass County.

Basically state agencies, departments or bureaus or political subdivisions of the state have only such authority as is granted to them or as is necessarily implied from the grant.

As to school districts, we are not aware of any specific or general statute which authorizes school districts to invest funds except sinking funds and in bonds issued for revenue producing buildings at the institutions of higher learning. See section 21-03-43 and section 15-55-08.

Even in instances where the legislature has authorized the investment of certain funds, as stated in section 21-03-43 the legislature specifically spelled out the type of investments and the conditions under which they may be made.

Also, in section 15-55-08, the legislature authorized certain governmental bodies to invest in revenue producing bonds provided such governmental body has the power to invest public funds.

Section 7-04-09 provides as follows:

SHARES - FIDUCIARIES, TRUSTEES, INSURANCE COMPANIES, CORPORATIONS, AND BANKS - INVESTMENTS. Administrators, executors, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies, banks, and other financial institutions, charitable, educational, eleemosynary, and public corporations and organizations, municipalities, and public officials are authorized to invest funds held by them, without any order of any court, in shares, certificates of deposit, and investment certificates of savings and building and loan associations which are under state supervision, and shares of federal savings and loan associations organized under the laws of the United States and under federal supervision, and such investments shall be deemed and held to be legal investments for such funds. Whenever, under the laws of this state or otherwise, a deposit of securities is required for any

purpose, the securities made legal investments by this section shall be acceptable for such deposits, and whenever, under the laws of this state, or otherwise, a bond is required with security, such bond may be furnished, and securities made legal investments by this section, in the amount of such bond; when deposited therewith, shall be as security without other security. The provisions of this section are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations, and officials referred to in this section and to the laws relating to the deposit of securities and the making and filing of bonds for any purpose."

This section per se does not grant authority to governmental entities to make investments. This section basically designates building and loan associations as legal investments, providing the governmental entity has the basic authority to make investments. The last sentence stating that the provisions of this section are supplemental to any other laws, means that governmental entities which have authority to make investments may invest funds in building and loan associations by virtue of this section even though it is not specifically so provided in the laws pertaining to the governmental entity. We do not believe that this language (the last sentence) was designed to, nor does it in fact grant authority to invest funds where such governmental entity is not otherwise granted such power.

Chapter 21-04 pertains to depositories of public funds. Its provisions regulate the terms and conditions under which governmental entities may deposit funds in certain depositories. As you noted in your letter, section 21-04-05 designates which banking corporations are legally recognized as a depository for public funds. In reviewing the provisions of chapter 21-04, we conclude that the depositories referred to in said chapter are only state banks incorporated and doing business in the state pursuant to the North Dakota laws, national banks situated and doing business within the state, and the Bank of North Dakota.

Chapter 21-04 pertains to deposits. In your letter you use the phrase "place its funds" which leaves some uncertainty as to whether you meant to refer merely to deposits or also to investments. We would note a distinction between a deposit and an investment. Some deposits, for example, a CD, or a time certificate, may be employed as an investment. Even so, it still does not change the basic character of a deposit. The placing of funds in a certified deposit or time certificate is basically a deposit even though it is for investment purposes. We, however, are not confronted with this question whether it constitutes a deposit or an investment.

We are convinced that section 7-04-09 in itself does not grant any authority to invest funds. We have not been able to find any authority for school districts to invest funds except those mentioned earlier. The aforementioned sections do not authorize school districts to invest its general fund money. The general fund money may be deposited pursuant to the provisions of chapter 21-04 but may not be invested in building and loan associations.

However, in instances where the school district is authorized to

invest funds such as sinking fund, section 7-04-09 would also permit the school district to invest such limited sinking funds in a building and loan association.

It is our opinion that school districts may deposit its funds only in those depositories recognized in section 21-04-05 which limits such depositories to state, national and Bank of North Dakota. It is our further opinion that sinking funds under the conditions set forth in section 21-03-43 may also be invested in building and loan associations under section 7-04-09 as well as in revenue bonds under section 15-55-08.

We would further conclude that if it is desirable that school districts be authorized to invest general funds in building and loan associations, legislation permitting same would first have to be enacted.

HELGI JOHANNESON

Attorney General