

Office of the Attorney General
State of North Dakota

Opinion No. 82-12

Date Issued: March 2, 1982
Requested by: Robert E. Manly
Eddy County State's Attorney

--QUESTIONS PRESENTED--

I.

Whether a public corporation as defined in Section 21-04-01 of the North Dakota Century Code has general authority to invest public funds in a savings and loan association.

II.

Whether a public corporation as defined in Section 21-04-01, N.D.C.C., has general authority to deposit or invest public funds in a credit union.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a public corporation has the general authority to invest public funds in the shares, certificates of deposit and investment certificates of a savings and loan association.

II.

It is my further opinion that a public corporation does not have the general authority to deposit or invest public funds in a credit union.

--ANALYSIS--

I.

Section 7-04-09, N.D.C.C., authorizes public corporations 'to invest funds held by them . . . 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 further specifies that 'such investments shall be deemed and

held to be legal investments for such funds.' The grant of authority for public corporations to invest public funds in savings and loan associations as set forth in Section 7-04-09, N.D.C.C., is supplemental and additional to the authority for public corporations to deposit public funds in banks as set forth in Sections 21-04-03 and 21-04-05, N.D.C.C., and to the grants of authority for investments of special funds as set forth in specific statutes throughout the North Dakota Century Code. See *The North Dakota Savings and Loan League, et al. v. Allen I. Olson, Attorney General for the State of North Dakota, et al.*, Civil No. 29305, District Court, South Central Judicial District, North Dakota, June 20, 1980.

II.

Public corporations have only that authority which the legislature has granted to them and which is necessarily implied by the grant. The general grants of authority for public corporations to deposit and invest public funds as set forth in Sections 21-04-03, 21-04-05, and 7-04-09, N.D.C.C., do not include the authority for public corporations to make deposits or investments of public funds in credit unions. No comparable grant of general authority for public corporations to deposit or invest public funds in credit unions is found within the North Dakota Century Code. Neither the plain language of the statutes enabling public corporations to deposit or invest public funds in banks or savings and loan associations nor the legislative history behind attempts to amend the general statutes governing investments and deposits of public funds support the argument that public corporations have the implicit power to deposit and invest public funds in credit unions. House Bill 1334 which was proposed to the 1981 Legislative Assembly in order to change the provisions of Chapter 21-04, N.D.C.C., to grant to public corporations the authority to deposit public funds in credit unions failed to receive legislative approval. It is thus clear that the legislature does not intend that public funds be invested or deposited in credit unions under general statutes which enable public corporations to deposit or invest public funds in banks and savings and loan associations.

The deposit or investment of special public funds in particular institutions is also governed by specific statutes. In order to determine the propriety of public corporations depositing or investing special funds in credit unions, the specific statutes pertaining to the special funds must be examined.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Marilyn Foss
Assistant Attorney General