

Office of the Attorney General
State of North Dakota

Opinion No. 82-79

Date Issued: December 8, 1982

Requested by: L. M. Stenehjem, Jr.
Commissioner
Department of Banking and Financial Institutions

--QUESTION PRESENTED--

Whether North Dakota banking associations may invest in industrial revenue bonds issued under the laws of another state.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that North Dakota banking associations may invest in industrial revenue bonds issued under the laws of another state.

--ANALYSIS--

In a previous opinion of this office, it was concluded 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. Instead, the purchase of municipal industrial revenue bonds may occur only in cases where the bonds are issued under the authority of Chapter 40-57 of the North Dakota Century Code by a municipality of and within this state. (1970-72 Op. Att'y Gen. 30 (1970).)

Section 40-57-10, N.D.C.C., provides, in part, as follows:

State or national banks may purchase bonds from each issue of revenue bonds issued under the provisions of this chapter in an amount not to exceed at any time twenty-five percent of the unimpaired capital and surplus of the bank.

Under Section 40-57-04, N.D.C.C., the issuance of municipal industrial revenue bonds may not be approved by a governing body unless it appears, after a public hearing, that approval is 'in the public interest of the municipality.'

Section 6-03-47.2, N.D.C.C., which was enacted by the Legislature in 1973 as Senate Bill 2331, provides as follows:

6-03-47.2. INVESTMENTS OF STATE BANKS.--In addition to the other powers authorized by law under this title, any state banking association may invest its funds in:

1. Bonds, notes, or debentures of any corporation rated at 'A' or higher by a nationally recognized rating service approved by the state banking board, provided that such investments shall not be made to exceed for any one corporation ten percent of the combined capital and surplus of the banking association; and

2. Equity and debt instruments of corporations or projects designed primarily to promote community welfare such as economic rehabilitation and development of low income areas, subject to approval and regulation of the state banking board but not to exceed for the total of all investments under this subsection, ten percent of the combined capital and surplus of the banking association.

The scope and intent of Section 6-03-47.2, N.D.C.C., is not clear. More specifically, to cite just one example of the obscure nature of this section, it is not clear whether the term 'corporation' includes both private and public (municipal) corporations. If the term 'corporations' is meant to include municipalities, industrial revenue bonds would be authorized investments under Section 6-03-47.2, N.D.C.C., either as bonds issued by an 'A' or higher rated corporation or as bonds issued by a corporation to 'promote community welfare.'

The intent of the Legislature is shown in the January 29, 1973, minutes of the State Industry, Business and Labor Committee. Appearing on behalf of the North Dakota Bankers Association, Bill Daner stated that the intent of Senate Bill 2331, introduced at the Association's request, is to give state banks the same power that national banks have under the National Banking Act.

The powers of national banks are set out in 12 U.S.C.A. Section 24, and the power of national banks with regard to dealing in securities and stock is set out in paragraph Seventh of that section. A review of that paragraph indicates that municipal industrial revenue bonds are authorized investments for national banks.

Therefore, it is my opinion that Section 6-03-47.2, N.D.C.C., does give North Dakota banking associations the power to invest in industrial revenue bonds issued under the laws of another state.

--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 question presented is decided by the courts.

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