

Office of the Attorney General
State of North Dakota

Opinion No. 85-29

Date Issued: August 15, 1985

Requested by: Marilyn K. Foss
Commissioner
Department of Banking and Financial Institutions

--QUESTION PRESENTED--

Whether Treasury Securities, the ownership of which is evidenced by Treasury Receipts, are securities which are eligible to be pledged by a financial institution as security for the repayment of a deposit of public funds by a public corporation pursuant to N.D.C.C. § 21-04-09.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that Treasury Securities, the ownership of which is evidenced by Treasury Receipts, are securities which are eligible to be pledged by a financial institution as security for the repayment of a deposit of public funds by a public corporation pursuant to N.D.C.C. § 21-04-09.

--ANALYSIS--

Public funds, as defined in N.D.C.C. § 21-04-01(5), of a public corporation, as defined in N.D.C.C. § 21-04-01(4), must be deposited in the Bank of North Dakota or in financial institutions which have been designated as depositories pursuant to N.D.C.C. Ch. 21-04. N.D.C.C. § 21-04-03.

As security for the repayment of deposits of a public corporation, in lieu of a personal or surety bond a financial institution may pledge securities to the public corporation in the amount of \$110 for every \$100 of public deposits. Securities which are eligible to be pledged include, among others, bills, notes, or bonds issued by the United States government, its agencies, or instrumentalities. N.D.C.C. § 21-04-09.

The term 'Treasury Receipts' is the product name given by certain investment bankers, such as First Boston Corp., to the instruments evidencing the ownership of future interest and principal payments on certain United States Treasury Notes or Bonds ('Treasury Securities'). The interest and principal payments on the Treasury Securities are direct obligations of the United States of America. The Treasury Securities against which the Treasury Receipts are

issued are held by a custodian financial institution ('Custodian') pursuant to a custody agreement entered into between the Custodian and the holders of the Treasury Receipts ('Custody Agreement'). The Treasury Receipts are issued by the Custodian in registered form which means that the Custodian must maintain a register in which the names of the holders of the Treasury Receipts are registered. Payments of interest and principal on the Treasury Securities, when received by the Custodian from the United States Treasury, are, upon surrender of the appropriate Treasury Receipts, paid by the Custodian to the registered holder of the Treasury Receipts in the manner provided by the Custody Agreement.

The sole obligor with respect to the Treasury Securities is the United States of America.

Any registered holder of a Treasury Receipt may withdraw the Treasury Securities evidenced by the TR by surrendering the TR at the appropriate office of the Custodian in the manner provided by the Custody Agreement.

Each holder of a Treasury Receipt must enter into and execute a supplement to the Custody Agreement by which the holder agrees to deposit certain Treasury Securities with the Custodian in return for the issuance to the holder of the particular TR evidencing the holder's interest in such Treasury Securities. The holder of a Treasury Receipt also agrees in the supplement to be bound by the terms of the custody agreement.

Correspondingly, the Custodian, in entering into and executing the supplement to the Custody Agreement, acknowledges the receipt of the Treasury Securities described in the supplement and recognizes the ownership interest of the holder of the TR to the described Treasury Securities.

Therefore, it is my opinion that Treasury Securities, the ownership of which is evidenced by Treasury Receipts, are securities which are eligible to be pledged by a financial institution as security for the repayment of a deposit of public funds by a public corporation pursuant to N.D.C.C. § 21-04-09.

The issue of the discretionary requirement of N.D.C.C. § 21-04-09 requiring that pledged securities be delivered to a financial institution for safekeeping has been the subject of a prior opinion of this office. See N.D. Op. Att'y Gen. 85-21.

--EFFECT--

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

Nicholas J. Spaeth
Attorney General

Assisted by: Thomas B. Tudor
Assistant Attorney General