

**OPINION
45-119**

December 6, 1945 (OPINION)

Hail Insurance

RE: Surplus Funds - Investments

This office is in receipt of your letter of December 5 relative to investment of surplus funds in the department of hail insurance, the fire and tornado fund, and the state bonding fund.

You state that there are surpluses in these funds which your department deems advisable to invest in accordance with the provisions of section 26-2407 of the North Dakota Revised Code of 1943; and you inquire whether your department would be authorized to invest such funds in insured building and loan certificates.

Section 26-2210 deals with the investment of surpluses in the hail insurance fund, and provides that the commissioner of insurance, when authorized by a resolution duly adopted by the industrial commission of the state of North Dakota, may invest monies in the state hail insurance fund in bonds of the United States of America, bonds of the state of North Dakota, or of any other state, or in certificates of indebtedness of the state of North Dakota, or in bonds or certificates of indebtedness of any political subdivision of the state of North Dakota, which constitute general obligations of the issuing tax authority.

Section 26-2303 deals with the investment of surpluses in the state bonding fund. It provides that when authorized to do so by resolution of the industrial commission of the state of North Dakota, the commissioner may invest excess monies in the fund in the same class of securities as provided for the investment of surpluses in the state hail insurance fund.

Likewise, section 26-2407, relating to the state fire and tornado fund, provides that the commissioner, when authorized by resolution adopted by the industrial commission of the state of North Dakota, may invest surplus funds in securities of the same class as provided for the investment of surpluses in the state hail insurance fund and the state bonding fund.

The question arises whether the surpluses in the three funds referred to are limited to the class of securities specified in sections 26-2210, 26-2303, and 26-2407, or whether such investments may be made in securities enumerated in section 7-0409 of the North Dakota Revised Code of 1943, which provides as follows:

"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 or 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 acceptable 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."

In this connection, I wish to call your attention to the latter portion of said section 7-0409 which provides that its provisions are supplemental to any and all other laws relating to and declaring what shall be legal investments for the funds enumerated therein. The section is very broad in its provisions, since it includes "Administrators, executors, guardians, trustees, and other fiduciaries of every kind and nature, **** public corporations and organizations, municipalities, and public officials, ****", all of whom are authorized to invest funds held by them in securities of savings and building and loan associations which are under state supervision, and in shares of federal savings and loan associations organized under the laws of the United States and under federal supervision, and providing that such investments shall be deemed to be legal investments for such funds.

Section 7-0409 was enacted subsequent to the enactment of sections 26-2210, 26-2303, and 26-2407, and is therefore the latest law on the subject. However, I do not believe that the time of enactment is controlling. The important factor is that there is no conflict between the statutes specifically referring to the three funds and section 7-0409, which provides that it shall be supplemental to any and all laws relating to and declaring what shall be legal investments.

In view of the broad language of section 7-0409, I believe it should be read in connection with the sections specifically referring to the hail insurance fund, fire and tornado fund, and the state bonding fund, and that investments may be made of surpluses in such funds in savings and building and loan associations' securities, provided that such securities are issued by associations under state or federal supervision.

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