

OPINION
48-9

July 7, 1948 (OPINION)

BANKS AND BANKING

RE: Investments

This is in reply to your recent inquiry as to whether there is a conflict between section 7-0409 and section 6- 0338 N.D.R.C. 1943 with reference to the legal right of banks to invest funds held by them in 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.

It will be noted that said section 7-0409 authorizes *** banks and other financial institutions *** to invest funds held by them without any order of any court in investment certificates of both state and federal building and loan associations where such associations are under state or federal supervision.

Section 6-0338 provides that "No bank, except as otherwise specifically authorized in this title, shall employ its money or other assets as principal; directly or indirectly, in trade or commerce, nor shall it employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm, or association, nor in speculative margins of stock, bonds, grain, provisions,***."

Upon close analysis, I do not believe that there is any conflict between the provisions of section 6-0338 and section 7-0409.

You will observe that section 6-0338 prohibits banks from investing any of its assets or funds in the stock of any corporation, bank, partnership, firm, or association, but the provisions does not include investment certificates of the building and loan associations mentioned in section 7-0409 which section specifically authorizes banks to invest funds held by them in shares, certificates of of deposit, and investment certificates of the building and loan associations mentioned therein.

You will also note that section 7-0409 limits the investments to shares or certificates of deposit or investment certificates of savings and building and loan associations, while section 6-0338 prohibits investments in the stock of any corporation, bank, partnership, firm, or association. But it does not mention shares, certificates of deposit, or investment certificates of savings and building and loan associations.

As I see it, therefore, the conflict between the two sections is more apparent than real. The investment which banks may make of their assets under section 7-0409 is limited to 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.

It is clear, therefore, that the provisions of section 7-0409 are not limited by the provisions of section 6-0338.

You further inquire whether under the rulemaking power of the state banking board as defined by section 6-0104, and as amended by chapter 143 of the 1945 Session Laws, would authorize the board to make rules and regulations limiting the amount of the class of investments referred to in said section 7-0409.

It is my opinion that the board may not make such rules because the law specifically provides that any rules made by the banking board shall not conflict with any law of this state or of the United States.

You also inquire whether or not under the provisions of section 6-0359 the banking board may limit the investment of funds by banks in the class of certificates referred to therein to ten percent of the unimpaired capital and surplus. Said section provides that the total liability of any person, corporation, company, or firm to any state banking association shall not exceed at any time ten percent of the unimpaired capital and surplus of such association. I do not believe that the banking board would have such power under said section. An investment by a bank in the certificates enumerated in section 7-0409 could not be considered a liability, and in the ordinary sense of the term, an investment is not a liability. The only limitation upon the investment of funds is that provided by section 6-0337, which provides that every banking association shall have on hand at all times in available funds an amount which shall equal ten percent of its demand deposits and amounts due to other banks, plus five percent of its time deposits. Such reserve funds may consist of cash on hand or of balances due to the association from the Bank of North Dakota, or good solvent state or national banks or trust companies, approved by the state examiner. Further, under said section 6-0337 the state examiner, whenever he deems it necessary or expedient to do so, may require such banking association, on fifteen days notice in writing, to increase such reserve requirements to not more than twenty percent of its demand deposits and not more than ten percent of its time deposits.

We know of no other limitations upon the amount of legal investments that may be made of funds held by banking associations.

P. O. SATHRE,

Attorney General