

OPINION
57-12

September 3, 1957 (OPINION)

BUILDING AND LOAN ASSOCIATIONS

RE: Investment of State Funds

You have made an inquiry of this office whether Section 185 of the Constitution of North Dakota precludes the investment of Workmen Compensation Funds, State Bonding Funds, Teachers Insurance and Retirement Funds and Hail Insurance Funds in building and loan associations and savings and loan associations.

Section 185 of the North Dakota Constitution reads as follows:

The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article 20 of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."

We call particular attention to the following part of said section: "but neither the state nor any political subdivision thereof * * *, nor subscribe to or become the owner of capital stock in any association or corporation."

We will notice that it refers to the state or any political subdivision. It is plain that the Workmen's Compensation, Hail Insurance, Teachers Insurance and Retirement and State Bonding funds are not subdivisions of the state. The question then is, are the funds of the Workmen's Compensation Bureau, Hail Insurance, Teachers Insurance and Retirement and State Bonding funds of the state. These funds are governed by different laws and we will take them up in order.

WORKMEN'S COMPENSATION FUNDS. Our supreme court has held in the following named cases that the Workmen's Compensation Fund is not a state fund. We find in the case of State v. Olson, 43 N.D. page 624 the following statement: "It is perfectly clear that the Workmen's Compensation Fund is no part of the state fund, and is, in no sense, public money." The same is the holding in the case of Bordson v. North Dakota Workmen's Compensation Bureau, 49 N.D. page 451, and the court in that case states as follows: "The Workmen's Compensation Fund is not synonymous with the State of North Dakota. It is true, an agency or fund organized in accordance with the directions at law, and supervised and administered by certain officers provided by law. But the claims against the Workmen's Compensation Fund, however, are not claims against the state, and the moneys in the fund are not state funds." (Citing authority is case of State v. Olson).

Again in the case of State v. Padgett, 54 N.D. page 217, we find the

following statement by the court: "The Workmen's Compensation Fund is not synonymous with the State of North Dakota; nor is the bureau the State of North Dakota. The claims against the fund are not claims against the State; and the fund itself is not a state fund." (Citing Bordson v. North Dakota Compensation Bureau).

Then in the case of Langer v. State, 69 N.D. page 147, we find the following statement by the court: "It is said that the moneys in the State Hail Insurance Fund, and the State Bonding Fund, the State Fire and Tornado Fund, and the Workmen's Compensation Fund, are not state moneys; that they are moneys held in trust by the state for the benefit and protection of those who, under the terms of the several acts, may become claimants against such funds; and that the moneys in such funds may not be deposited in the general fund of the state and appropriated by the Legislature for general purposes."

It, therefore, follows that investment of the Workmen's Compensation Fund in building and loan associations and savings and loan associations stock are not prohibited by Section 185 of the Constitution of North Dakota.

Another question may arise as to the right of investing such funds under our statutes. The last law regarding that question is found in Chapter 181 of the 1957 Session Laws amending Section 65-0431 of the 1953 Supplement to the N.D.R.C. of 1943 and it provides there with reference to the investment of the funds of the Workmen's Compensation Fund and we find that it states as follows: "and purchase such mortgage investments dated after the effective date of this Act as are insured by or guaranteed in any manner wholly or in part, or other investments that are fully guaranteed by the United States * * *." It, therefore, seems plain that the shares and interests in the building and loan associations and savings and loan associations are proper and lawful investments.

STATE BONDING FUND. With reference to the investment in stock and shares in building and loan associations and savings and loan associations of the State Bonding Fund, the same law applies as to Workmen's Compensation funds as far as SECTION 185 of the Constitution of North Dakota is concerned. The statute referring to investment of the State Bonding Fund is found in Chapter 181 of the 1957 Session Laws amending Section 26-2303. Said law is similar in regard to the investment in government guaranteed securities. It is, therefore, plain that the investments in building and loan associations and savings and loan associations are proper lawful investments of the State Bonding Fund.

TEACHER'S INSURANCE AND RETIREMENT. The Teacher's Insurance and Retirement Funds are governed by the same decisions of the supreme court with regard to the nature of the funds as the Workmen's Compensation Fund and the State Bonding Fund as far as Section 185 of the North Dakota Constitution and concerned. The statute governing the Teacher's Insurance and Retirement Fund is found in Chapter 181 of the 1957 Session Laws amending Section 15-3926 and the same provisions are found in this law with reference to the government guaranteed securities as were found with reference to the Workmen's Compensation and the State Bonding cases.

It is, therefore, plain that said building and loan associations and savings and loan associations, stocks and other securities are proper lawful investments of the Teacher's Insurance and Retirement Fund.

HAIL INSURANCE FUND. The law with reference to Section 185 of the North Dakota Constitution as applicable to Hail Insurance funds is the same as the law with reference to the above mentioned funds of the Workmen's Compensation Bureau, Teacher's Insurance and Retirement Fund and the State Bonding Fund, and it is so mentioned in the case of Langer v. State, 69 N.D. 147. It is there stated as follows: "It is said that the moneys in the State Hail Insurance Fund, and the State Bonding Fund, the State Fire and Tornado Fund, and the Workmen's Compensation Fund, are not state moneys; * * * *."

With reference to the statutory law on that question, it is more complicated. In Chapter 181 of the 1957 Session Laws amending Section 26-2210 with reference to investments of Hail Insurance Fund, it is noticeable that the part of Chapter 181 of the 1957 Session Laws dealing with Hail Insurance funds omits the statement with reference to other funds guaranteed by the United States which statement is found in the law involving the funds of the Workmen's Compensation Fund, Teacher's Insurance and Retirement Fund and State Bonding Fund. The statement regarding the Hail Insurance Fund is as follows: "The commissioner of insurance, when authorized to do so by a resolution duly adopted by the industrial commission of the state of North Dakota, may invest moneys in the state hail insurance fund in the bonds of the United State 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, certificates of indebtedness, or warrants of any political subdivision of the State of North Dakota, which constitute the general or contingent general obligations of the issuing tax authority."

We notice therefrom that this statement omits the government securities in the authorized investment of the Hail Insurance Funds.

The question is, was the intention of the Legislature to make the laws with reference to securities of the Hail Insurance Fund different from the other funds. With reference to the other funds, it provided, as we have stated, that it referred to guaranteed government securities.

Since the statutes involved, namely Section 26-2210 of the N.D.R.C. of 1943 and amendments thereto being Chapter 181 of the 1957 Session Laws, authorize only investments 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, certificates of indebtedness, or warrants of any political subdivision of the State of North Dakota which constitute the general or contingent obligations of the issuing tax authority, and omit the other securities guaranteed by the United States government in the investments of the funds of the Workmen's Compensation Bureau, the Teacher's Insurance and Retirement Fund and the State Bonding Fund, it would indicate that the Legislature intended that the Hail Insurance Fund should not be allowed to be invested in securities other than these mentioned in the statute which have heretofore been enumerated. It is, therefore, doubtful if such Hail Insurance Fund

can be invested in building and loan associations and savings and loan associations.

Consequently, the said Hail Insurance Fund should not be invested therein until the law is changed by legislative enactment or by judicial determination of the validity thereof.

In the opinion of the Attorney General of the State of North Dakota dated August 10, 1955, to the Honorable A. J. Jenson, Commissioner of Insurance, the same conclusions are reached.

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Attorney General