

**OPINION
59-111**

April 6, 1959 (OPINION)

FIRES

RE: Rural Fire Protection Districts - Powers of Directors - Mortgage

This is in reply to your letter of March 25, 1959, concerning the power of rural fire protection districts to mortgage property. You ask if the board of directors of such districts has the power to mortgage property and if they have such power is a bank making a loan secured by such mortgage confined by the limitations regarding real estate loans.

As you have noted in your letter, section 18-1006(7) of the 1957 Supplement to the North Dakota Revised Code of 1943 permits the board of directors to incur indebtedness. This section provides as follows:

"The board of directors shall have the following general powers:

7. To incur indebtedness on behalf of the districts within the limits prescribed by section 8 (s. 18-1008), and to authorize the issuance of evidences of such indebtedness permitted under section eight (s. 18-1008), and to pledge any real or personal property owned or acquired by the district as security for the same;". . . .

Section 18-1008 provides:

"INDEBTEDNESS OF DISTRICT LIMITED. No district shall become indebted for more than ten thousand dollars, nor for an amount that may not be payable from ten annual maximum tax levies as authorized by section seven (s. 18-1007). Within the limits herein authorized, the district shall have power to borrow money at a rate not in excess of six percent per annum and to issue appropriate evidences of indebtedness thereof which shall be registered with the county treasurer."

You will notice that the last portion of section 18-1006(7) permits the board of directors to pledge any real or personal property owned or acquired by the district as security. This apparently gives the board the power to mortgage property. Rural fire protection districts are governed by chapter 18-10 of the 1957 Supplement to the North Dakota Revised Code of 1943 and the general statutes governing taxing districts are not applicable to them in most instances.

Section 6-0305 of the North Dakota Revised Code of 1943 limits the amount of loans a bank may make when such loans are dependent primarily upon real estate security. Therefore, if a bank takes a real estate mortgage as security for a loan, the provisions of section 6-0305 would apply since the real estate becomes primarily liable for the repayment of the loan. However, if certificates of

indebtedness or other appropriate evidences of indebtedness are received by the bank and are secured by a mortgage, the provision of section 6-0305 would not appear to apply since the loan is no longer dependent primarily upon the real estate security.

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