

COUNTY FUNDS: FEDERAL HOME OWNERS' LOAN BONDS AS LAWFUL INVESTMENTS FOR FUNDS OF COUNTY ACCUMULATED TO MEET FUNDED INDEBTEDNESS.

12-20  
1118-12123 R.S. Mo. 1929

December the Fifteenth

1933

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Honorable Eugene A. Farris,  
Prosecuting Attorney Ray County,  
Richmond, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of September 8, 1933, such request being in the following terms:

"Our County has a first mortgage on some real estate here. The owner can secure a loan from the Home Loan Dept. of the Government for the amount of his indebtedness, if he can use the Gov't bonds to pay off the County?

May our County Court accept as payment of their loan, these gov't securities instead of cash. They are willing, if this is legal. I don't just know the character of paper the Gov't would issue. There are several in this County would like to do likewise."

According to the Revised Statutes of Missouri of 1929 funds accumulated by counties in Missouri for the repayment of county indebtedness may be invested in either of two ways, the first being in real estate mortgages under R. S. Mo. 1929, Sec. 12117-12122, and the second being by investment in certain bonds under Sec. 12123.

The first of these methods for present purposes can probably be sufficiently described by the language of Section 12118, which provides as follows:

"When any such money shall be loaned by the county court, they shall cause the same to be secured by a mortgage in fee on real estate, free from all liens and encumbrances, within the county, of the value of double the amount of the loan, with a bond and personal security in addition thereto; and no loan shall be made to any person other than an inhabitant of the same county, nor shall any person be accepted as security who is not at the time a resident householder therein, who does not own and is not assessed in property in an amount equal to that loaned in addition to all debts for which he is otherwise liable, and property exempt from execution."

The second method is provided for in Section 12123, as follows:

"In case the county court of any county, having such money as is referred to in the foregoing sections of this article, shall

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deem it best, such court, instead of loaning such money in the manner hereinbefore provided for, may invest the same either in purchasing, on the best terms-obtainable, bonds of the United States or of the state of Missouri, said bonds to be held in trust for the fund or funds to which the money applied to their purchase belonged, and shall be so expressed in the public records of the county."

The single issue, therefore, is whether or not bonds issued by the Home Owners' Loan Corporation would come within one or the other of the above statutory qualifications.

The Home Owners' Loan Corporation was created by the Home Owners' Loan Act of 1933, approved June 13, 1933. Briefly summarized the corporation created by such act is to function in the following manner, the figures and letters given in such description being the sections and subdivisions of the act. The corporation is governed by the Federal Home Loan Bank Board which is authorized to issue capital stock in the amount of \$200,000,000.00 which is to be subscribed for and paid for by the Secretary of the Treasury of the United States, the money for such payment to be advanced to the Secretary of the Treasury by the Reconstruction Finance Corporation. (Section 4 (b)). The corporation is authorized to issue bonds which are the bonds in question in your request in an amount not to exceed \$2,000,000,000.00, such bonds to be paid for either by cash or by first mortgages on real estate, such bonds being guaranteed as to interest only by the United States (Section 4 (c)). The bonds issued for real estate mortgages may be in amounts up to 80% of the value of the property secured by such mortgages, and also the corporation is authorized to make advances in cash to pay taxes and assessments on the real estate secured by such mortgage to meet the incidental expenses of the transaction, and to pay as much as \$50.00 in cash on each mortgage to the holder thereof (Section 4 (d)), and the corporation is authorized to employ and pay as part of its expenses various agents, employees, officers and attorneys (Section 4 (j)). The bonds issued by the corporation have a maximum eighteen year maturity. (Section 4 (e)).

The above description of the general structure, organization and authorized operations of the Home Owners' Loan Corporation has been given to show that bonds issued by it could not be considered to fall within the first possible class of investments for county funds, i. e., real estate mortgages. In the first place, even assuming that a bondholder would have a direct interest in all of the real estate mortgages held by the corporation, such real estate mortgages could be in amounts up to 80% of the total value of real estate secured thereby whereas Revised Statutes of Missouri 1929 Section 12118 provides that real estate mortgages cannot exceed 50% of the value of the property secured thereby if they are to be available as investments for county funds. Furthermore, the requirements of Section 12118 as to the land secured by such mortgage and the person whose personal security is engaged being within the county could not be complied with by the bonds in question here because the mortgages held by the Home Owners' Loan Corporation will be secured by land all over the United States and the persons whose personal security is behind the mortgages will be likewise widely distributed beyond the confines of the county. Furthermore, although this would not necessarily be a difficulty

Section 12117 contains the following proviso "Provided, that no loan shall, in case of loan of sinking fund, extend beyond the maturity of the indebtedness said sinking fund is provided for and intended to pay" and it might be very likely that the eighteen year maturity of the bonds would extend considerably beyond the maturity of sinking fund indebtedness of the county. For these various reasons it seems plain that although the Home Owners' Loan bonds are in a sense real estate mortgages in that the assets behind them are entirely cash and real estate mortgages, nevertheless they are not real estate mortgages in the sense that they could qualify as an investment of county funds in real estate mortgages under Revised Statutes of Missouri 1929, section 12117-12122.

The second and remaining consideration is whether or not the Home Owners' Loan bonds are "bonds of the United States" within the meaning of Section 12123. These bonds are obligations of the Home Owners' Loan Corporation by which they are issued, and the United States is not liable for the principal thereof, but in Section 4 (c) of the act it is provided that the bonds "shall be fully and unconditionally guaranteed as to interest only by the United States." Thus, as far as interest is concerned, these bonds are bonds of the United States in the sense that the United States undertakes to pay such interest, but there is no undertaking anywhere in the act by the United States to pay the principal and, therefore, such bonds cannot be considered as bonds of the United States in the sense that Liberty Bonds and treasury certificates are bonds of the United States.

The bonds in question have some features in common with treasury certificates and other direct obligations of the United States. Thus they are exempt both as to principal and interest from all state and federal taxation (Section 4 (c)), but bonds of many other government created corporations have been declared to be federal instrumentalities and exempt from taxation without ever being regarded as bonds of the United States so that being exempt as a federal instrumentality from taxation would hardly seem to make an obligation a bond of the United States which would not otherwise be such (see Act of Congress of July 17, 1916, c. 245, Section 26, 39 Stat. 380, 12 U. S. C. A. Section 931, providing as follows:

"Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section 761 and section 781 of this chapter. First mortgages executed to Federal land banks, or to joint-stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation."

Other similarities between these bonds and treasury certificates or

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Liberty Bonds are their acceptability at par as collateral security against deposits of public moneys with depositaries by the Treasury Department of the United States under Treasury Department circulars Nos. 92 and 176. Likewise, the Reconstruction Finance Corporation will accept such bonds at 80% of par as collateral security for loans, Jesse H. Jones, chairman of the Reconstruction Finance Corporation stating in a letter under date of July 22, 1933 to the chairman of the Home Owners' Loan Corporation that "it is needless to add that the determination to make loans of so great a percentage against these bonds has been reached only upon the conclusion that your bonds should be treated as prime collateral." Likewise, the trustees of the Postal Savings System have determined to accept as security for deposit of postal savings funds these bonds at their market value, and the Comptroller of the Currency has ruled that these bonds may be acquired and carried on the books at their actual value by national banks (see Preliminary Proof No. 1 of Home Owners' Loan Corporation, Department) of Commerce Building, Washington, D. C.) Presumably, the above rulings by various departments of the federal government treating the Home Owners' Loan Corporation's bonds as being the same class of security as United States bonds is somewhat persuasive toward regarding the Home Owners' Loan Corporation's bonds as bonds of the United States for investment and security purposes, and if this opinion were being rendered to a department of the federal government it might possibly be necessary to reach a contrary conclusion from that which has been reached by us. However, the Missouri statutes use the words "bonds of the United States", and a bond the principal of which is not in any sense an obligation of the United States cannot by any reasonable construction of language be regarded as a bond of the United States within a statute which is prescribing strict requirements for investments of public funds.

For the foregoing reasons it is our conclusion that bonds of the Home Owners' Loan Corporation issued under the act of Congress approved June 13, 1933, known as the Home Owners' Land Act of 1933 would not be a proper legal investment for money in the hands of a county collected for the purpose of constituting a fund for the repayment of county indebtedness.

Yours very truly,

EDWARD H. MILLER

APPROVED:

ASSISTANT ATTORNEY GENERAL.

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ATTORNEY GENERAL.