

STATE FUNDS AND PROPERTY: Right of State Treasurer to accept Home Owners Loan Bonds in Exchange for Real Estate Security Obtained by Reason of Default of State Depositories; also to accept Federal Farm Loan Bonds.

1-22
January 11, 1934.

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Honorable Richard R. Nacy,
State Treasurer,
Jefferson City, Missouri.

Dear Sir:

A request for opinion under date of December 18, 1933 has been received from you, such request being in the following terms:

"I have been requested to accept Federal Loan Bonds, or Home Loan Owners Bonds for the sale price of farms the State has acquired in closed banks.

Will you kindly give me your opinion of this matter."

This request was further elaborated by letter from you under date of January 4, 1934 which, insofar as it pertains to this matter, was as follows:

"My letter of December 18th was suggested by Judge John S. Farrington, Springfield, Missouri who has been giving this department some assistance in disposing of securities belonging to the state through the failure of state depositories.

1st. In the particular case I had in mind when this inquiry was made was where the State had foreclosed on real estate and had an opportunity to dispose of same if permitted to accept bonds as mentioned above.

2nd. This department has now come into possession of certain pieces of real estate where the borrower has voluntarily made deed to the State.

3rd. I am holding notes and mortgages to a number of pieces of property as collateral in closed banks which have not been foreclosed."

Revised Statutes of Missouri of 1929, Section 11469, amended by Laws of 1931, page 378, provides as follows:

"Sec. 11469. Security required for safe-keeping of funds deposited by state treasurer.--For the security of the funds deposited by the treasurer under the provisions of articles 1 and 2 of this chapter the governor, attorney-general and the treasurer shall require of said selected and approved

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banks or banking institutions giving security for the safe-keeping and payment of said deposits a bond equal to at least twenty-five per cent. of the amount of the accepted bid or bids, to be approved by the governor and attorney-general, and in addition thereto bonds of the United States, the state of Missouri, or in their discretion, the registered bonds of the city of St. Louis or of any other city in this state having a population of not less than two thousand, or in their discretion the registered bonds of any county in this state, or in their discretion the registered bonds of any school district situated in any city, town or village in this state, or in their discretion the approved registered bonds of any drainage or levee district in this state, or in their discretion the approved registered bonds of any special road district in this state, or in their discretion the registered state bonds of any state, or in their discretion the federal land bank bonds, to an amount of at least equal in value to the amount of the deposits with such banks or banking institutions; which bonds shall be delivered to the state treasurer, and receipted for by him and retained by him in the vaults of the state treasury of this state, or in the vaults of such banks or safe depository as the governor, attorney-general and treasurer may agree upon; and if in any case, or at any time, such bonds are not satisfactory security to the governor and attorney-general for deposits made under articles 1 and 2 of this chapter, they may require such additional security to be given as shall be satisfactory to them, which said bonds or any part thereof, may from time to time be withdrawn on the written consent of the governor, attorney-general and treasurer; and the governor, attorney-general and state treasurer shall, from time to time, inspect such bonds and see that the same are actually kept in the vaults of the state treasury, or in the vaults of such bank or banks other than the bank or banks selected as the state depository, as the governor, attorney-general and state treasurer may have duly agreed upon: Provided, that sufficient amount of said bonds to secure said deposits shall always be kept in the treasury or in such selected depository, and in the event that such bank or banks or banking institutions of deposit shall fail to pay such deposits, or any part thereof, on the check or checks of the state treasurer, then it shall be the duty of the state treasurer to forthwith convert such bonds into money and disburse the same according to law, upon the warrants drawn by the state auditor upon the funds for which said bonds are security. Any bank making deposits of bonds with the state treasurer under the provisions of articles 1 and 2 of this chapter may cause such bonds to be endorsed or stamped, as may they deem proper, so as to show they are deposited as collateral, and are not transferable, except upon the conditions of articles 1 and 2 of this chapter: Provided, however, the governor, attorney-general and treasurer in their discretion, may allow said selected banks to deposit as security for the safe-keeping of said funds, in lieu of the above mentioned bonds, the notes held by said banks or banking institutions, secured by first deeds of trust

on Missouri real estate, which notes and deeds of trust shall not exceed fifty per cent of the actual value of said real estate, which security shall also be accompanied by an abstract of title certified to date by a competent abstractor and the written opinion of some reputable lawyer to the effect that the title to the lands covered by such deeds of trust is well vested in the grantors of such deeds, and said bank or banking institutions shall be required to furnish a personal bond equal to at least seventy-five per cent of the amount of the accepted bid or bids: Provided, if by reason of the failure of any of the depositories to renew their contracts by having their bid or bids rejected, they shall be allowed by and with the written consent of the governor, attorney-general and state treasurer, not more than one hundred and eighty days from the day their bid or bids may be opened and rejected, in which to pay over to the state treasurer whatever balance may be due to the state on the deposit held by them such balances so held to bear the same rate of interest as provided for in their original bid or bids. The treasurer shall have authority to employ an additional clerk to assist in carrying (out) the provisions of this section at a salary not to exceed one hundred and fifty dollars a month."

and it was held in the case of *In Re Holland Banking Co.*, 313 Mo. 307, 281 S. W. 702 (1926) in dealing with the scope of the above quoted statute as follows:

"We are satisfied that the decided trend of the better-reasoned cases is to the effect that where a State has a general statute giving priority to the debts due the State, or where the common law to the same effect is recognized and where such state also has a depository law directing the deposit of the state's funds in selected depositories which are required to give full and adequate security equal to or in excess of such deposits as may lawfully be made therein, and where no preference over and above the protection of such security is specifically provided for in such depository law, the State will be deemed to have waived its priority rights under the general priority statute or the common law as the case may be, and will be required to look to the security taken by it for the repayment of such deposits and can only come in on a parity with general creditors for a distributive share of the unpledged assets of the insolvent depository after it has exhausted the security taken by it and applied same upon its debt."

From this quotation it is evident that the Supreme Court of Missouri feels that Section 11469 provides a complete scheme for the protection of state deposits, and that it supplants and supercedes any other common law or statutory rights, powers and duties in connection with security for state funds.

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As to the Federal Home Owners' Loan Bonds, it is evident from Section 11469 that such bonds would not have been under the statute a proper security for state deposits. Of the various types of bonds authorized by Section 11469 as proper bonds for security of state deposits the only type referred to in the statute which might include Home Owners' Loan Bonds would be "bonds of the United States" and it is submitted that Home Owners' Loan Bonds are not bonds of the United States within the meaning of the statute for the reasons hereinafter set out.

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)).

Home Owners' Loan 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, so 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 for 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.

There are various similarities between Home Owners' Loan Bonds and Treasury Certificates or Liberty Bonds as, for example, the fact that Home Owners' Loan Bonds are acceptable at par as collateral security against deposits of public moneys with depositories by the Treasury Department of the United States under Treasury Department Circulars Numbers 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

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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.

It has been demonstrated above that Home Owners' Loan Bonds could not have been taken originally as security for state deposits. One reason for the rather lengthy analysis above to that effect was the possible consideration that if such bonds could be taken originally as security they could now be accepted in lieu of that which was originally in your cases taken as security, and the foregoing discussion has been confined to that part of Section 11469 which deals with bonds as security. However, section 11469 provides also that notes secured by first deeds of trust on Missouri real estate may be accepted as security for state deposits in lieu of the bonds above described, and the primary question is presented of whether or not bonds of the Home Owners' Loan Corporation could be regarded as deeds of trust within the meaning of Section 11469. It will be unnecessary to discuss whether or not these bonds are deeds of trust, because although the bonds are secured almost wholly by real estate on which the Home Owners' Loan Corporation has a lien, nevertheless such real estate is scattered all over the United States and, therefore, such bonds could not fall within the language of Section 11469 which provides that deeds of trust securing state deposits must be secured by "Missouri real estate."

There seems to be little doubt that there would be a right to foreclose on the deeds of trust deposited with the state as security for obligations on which default has been made by closed banks because the statutory authorities in Section 11469 to accept the deeds of trust which have been accepted must necessarily imply the power to use such deeds of trust when default has been made in the payment of the state deposits, because otherwise the security would be valueless and, indeed, in the last part of the quotation set out above from In Re Holland Banking Company it is apparent that the Supreme Court of Missouri feels that the state can and

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must realize on the security deposited with it by state depositaries. This leaves as the sole question the method of realizing on such security which is, of course, the heart of the problem raised by your inquiry.

Section 11469 provides that where bonds have been deposited to secure state deposits, and where default has been made in paying such state deposits "then it shall be the duty of the state treasurer to forthwith convert such bonds into money" and it is our opinion that the same requirement and the language just quoted would apply equally to real estate securities. In the proviso authorizing the acceptance of notes secured by deeds of trust a requirement that on default such security shall be converted into money does not appear. However, the statutory authorization of Section 11469 to accept deeds of trust as security allows their acceptance "in lieu of the above mentioned bonds" which would seem to indicate that the same procedure should be followed on default with respect to real estate security as would be followed with respect to bonds, and this conclusion is strengthened by the fact that the proviso authorizing the acceptance of such real estate security was added to the statute long after the original enactment of the statute, such proviso being added by Laws of 1913, page 770, which would seem to indicate a purpose of the General Assembly merely to add to the statute another type of security which could be accepted which would be dealt with in the same manner as was provided in the procedure outlined in the statute as it existed before the addition of such proviso. Furthermore, even if it were not mandatory upon the state treasurer to convert such deeds of trust into money, no statutory authorization has been found to convert property acquired by statutory authorization, as were these deeds of trust, into property which is not authorized by any other statute as a state investment so that the burden of justifying such investment would be upon the state treasurer.

In conclusion, it is our opinion that the state treasurer would not be authorized to accept Federal Home Owners' Loan Bonds in exchange for deeds of trust or real estate acquired by the state by reason of the default of state depositaries by whom such deeds of trust or real estate had been deposited with the state as security for such deposits.

As to Federal Farm Loan Bonds a different question is presented. By Section 11469 it is expressly provided that it shall be proper to accept "the federal land bank bonds" as security for state deposits. There is no such thing technically as a federal land bank bond, that designation being merely the popular description for bonds issued by federal land banks which are called by the statute and are technically and correctly designated as federal farm loan bonds, and such federal farm loan bonds have been authorized since 1916. Act July 17, 1916 c. 245, section 39, 39 Stat. 372, see also Executive Order March 27, 1933, No. 6064, 12 U. S. C. A. section 761. Thus, since there is no such thing technically as a federal land bank bond Section 11469 of the Missouri statutes must refer to Federal Farm Loan Bonds issued by the federal land banks. The new Federal Farm Loan Bonds under the Act of 1933 do differ slightly from the Federal Farm Loan Bonds under the 1916 Act, but these differences are to the advantage of the new bonds in connection with which there is a statutory authorization given for the United States to guarantee

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the interest up to two years, no such authorization or provision being effective for the old bonds, Act June 16, 1933 c. 98, Section 50 (a), 48 Stat. 273, 12 U. S. C. A. Section 992, so that both practically and technically the new bonds to be issued by the Federal Land Bank under the 1933 Act would seem to be qualified as a proper form of security for state deposits under Section 11469 equally, at least, with the Federal Farm Loan Bonds issued under the 1916 Act, and if qualified as security originally it does not seem improper now to receive them in exchange for other property such as real estate security which was acquired through closed banks. It might be remarked that no Federal Farm Loan Bonds of the new type are yet in the hands of the public nor, according to the manager of the Bond Department of the Federal Land Bank in St. Louis, have any regulations or advance information been issued concerning them.

In conclusion, it is our opinion as to Federal Farm Loan Bonds that such bonds that are issued prior to 1933 or under the 1933 Act of Congress would be proper security for state deposits under U. S. No. 1929, Section 11469, and that there would be no statutory prohibition to receiving such bonds in exchange for other assets acquired under foreclosure on securities deposited with the state to secure state deposits.

Yours very truly,

EDWARD H. MILLER,

ESM:LR

ASSISTANT ATTORNEY GENERAL.

APPROVED:

ATTORNEY GENERAL.