

HOME OWNERS' LOAN CORPORATION BONDS: Bonds issued under Amended Act of June 27, 1934 may be accepted as collateral for state funds and county deposits; bonds issued prior to effective date of amended section are not acceptable unless they have since received same guarantee.

12-27

December 17, 1934.



Hon. Francis X. Pavesich,  
Home Owners' Loan Corporation,  
1015 Buder Building,  
7th & Market Streets,  
St. Louis, Missouri.

Dear Sir:

This department is in receipt of your letter of December 7, 1934 making inquiry as to whether or not Home Owners' Loan Corporation Bonds are eligible as security or collateral for the deposit of state funds or county deposits in Missouri.

Section 12187, R.S. Mo. 1929 sets forth the character of security required in Missouri for county deposits and is as follows:

"Within ten days after the selection of depositaries, it shall be the duty of each successful bidder to execute a bond payable to the county, to be approved by the county court and filed in the office of the clerk thereof, with not less than five solvent sureties, who shall own unencumbered real estate in this state of as great value as the amount of said bond, or with a surety or trust company authorized by the laws of this state to execute bonds as surety: Provided, that the court may accept in lieu of real estate as security bonds of the United States or of the state of Missouri, which said bonds shall be deposited as the court may direct; the penalty of each depositary's bond to be not less than such proportion of the total annual revenue of said county for the years for which such bond is given as the sum of the part or parts of the funds awarded to such bidder selected respectively

bears to the whole number of said parts the amount of the bond to be fixed by the court, and said bond shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon said depository and for the payment upon presentation of all checks drawn upon said depository by the proper officers of said county or any township whenever any funds shall be in said depository, and that all interest will be paid promptly, and that all said funds shall be faithfully kept and accounted for according to law; and for a breach of said bond the county or any school district or township of said county or any person injured may maintain an action in the name of the county to the use of the complainant."

Section 11469, Laws of Missouri, 1931, page 378, sets forth the type or character of security required by the State for its deposits and is as follows:

"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 banks or banking institutions giving security for the safe-keeping and payment of said deposits a bond equal to at least 25% 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 warrant drawn by the State Auditor upon the funds for which such 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 indorsed or stamped as may they deem proper, so as to show they are deposited as collateral, and are not transferrable, 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 fifty dollars a month."

You will note in that in both sections of the statute the term "bonds of the United States" is used. As we understand Home Owners' Loan Corporation Bonds, they are not strictly denominated United States Bonds; hence, by a strict construction of the two above quoted sections, we are compelled to say that they are not acceptable as collateral or security for state funds or county deposits because they are not included and set forth in said sections as being acceptable. However, the last session of Congress has apparently broadened the scope of Home Owners' Loan Corporation Bonds, and we believe by amendments to the original Act has made these bonds equivalent to United States Bonds.

Sub-section (c) (1) of Section 4 of the Home Owners' Loan Act of 1933 as Amended provides:

"The Corporation is authorized to issue bonds in an aggregate amount not to exceed \$3,000,000,000, which may be exchanged as hereinafter provided, or which may be sold by the Corporation to obtain funds

for carrying out the purposes of this section or for the redemption of any of its outstanding bonds called in for retirement; and the Corporation is further authorized to increase its total bond issue in an amount equal to the amount of the bonds so called in and retired. Such bonds shall be in such forms and denominations, shall mature within such periods of not more than eighteen years from the date of their issue, shall bear such rates of interest not exceeding 4 per centum per annum, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices, as may be prescribed by the Corporation, with the approval of the Secretary of the Treasury. Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security for all fiduciary, trust and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. In the event that the Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such bonds, the Secretary of the Treasury shall pay to the holder the amount thereof which is hereby authorized to be appropriated out of any moneys in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such bonds. The Secretary of the Treasury, in his discretion, is authorized to purchase any bonds of the Corporation issued under this subsection which are guaranteed as to interest and principal, and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of the Corporation's bonds hereunder."

The question of United States Bonds and an interpretation of Section 12187, R.S. Mo. 1929 was before the Supreme Court of Missouri in the case of Huntsville Trust Co. v. Noel, 12 S.W. (2d) 1.c. 753-754, wherein the learned judge said:

"The original County Depository Act, including what is now section 9585, was passed in 1889 (Laws 1889, p. 81). The section has undergone amendment from time to time, but is in substantially the same form as originally enacted, with the exception of two major amendments. In 1891 there was inserted, as it now appears, this proviso: 'Provided, that the court may accept in lieu of real estate as security bonds of the United States or of the State of Missouri, which said bonds shall be deposited as the court may direct.' Laws 1891, p. 104. In 1915 (Laws 1915, p. 249), the words 'or with a surety or trust company authorized by the laws of this state to execute bonds as surety' were inserted in the place where they now appear. The amendment of 1891 is the one with which we are concerned. What did the Legislature intend when it said that 'the court may accept in lieu of real estate as security bonds of the United States'? This language unquestionably refers to the preceding provision that, in addition to the principal, the bond shall be executed by 'not less than five solvent sureties who own unencumbered real estate in this State of as great value as the amount of the bond.' As respondent construes the proviso, it does not dispense with either bond or sureties, but merely permits the court to accept sureties who do not own real estate, if they, the sureties, will deliver to the court United States bonds 'of as great value as the amount of the bond.' This construction seems both awkward and strained. It will be noted that the section nowhere provides for the taking of real estate as security. The five sureties who own real estate do not, by signing the bond, place a lien or charge upon their real estate. The security afforded by the bond and the only security afforded by it, is the joint and several personal liability of sureties who own real estate. It is in lieu of that security that the statute authorizes the taking of bonds of the United States. It would follow, therefore, that the proviso authorizes the court to take government bonds in lieu of the security afforded by a bond signed by sureties who own real estate."

Subsection (c) (2) of Section 4 of the Home Owners' Loan Act of 1933 as Amended is as follows:

"The amendments made by subsection (c) (1) of this section (except with respect to refunding) shall not apply to any bonds heretofore issued by the Home Owners' Loan Corporation under such section 4 (c), or to any bonds hereafter issued in compliance with commitments of the Corporation outstanding on the date of enactment of this Act. \*\*\*\*"

The Attorney General of the United States in an opinion dated September 14, 1934, said in part as follows:

"The guaranty being stated by the statute as full and unconditional, there is no occasion to consider whether a condition should be implied. The separate provision that the Secretary of the Treasury shall pay if the corporation is unable to pay upon demand is no part of the guaranty, but merely a provision for carrying it out in the only reasonably conceivable contingency that would require such action.

Considering the foregoing, it is my opinion that if either corporation should fail, upon demand by a bona fide and accredited holder, to pay either principal or interest when due, the United States would thereupon become obligated to make such payment, and its obligation would not be conditioned upon the institution of any proceeding by the bondholder against the corporation."

#### CONCLUSION

By the terms of Section 4 (a) of the Home Owners' Loan Act as Amended, the Home Owners' Loan Corporation Board is denominated an instrumentality of the United States even though it be in the nature of a separate corporation. It appears to have the power to issue the bonds in form, denomination and price, with the approval of the Secretary of the Treasury. The bonds are unconditionally guaranteed, both as to principal and interest by the government of the United States, such guaranty

being expressed on the face of the bonds, and they "may be accepted as security for all fiduciary, trust and public funds." It is therefore the opinion of this department that Home Owners' Loan Corporation Bonds issued under the Amended Act of June 27, 1934 are eligible as security or collateral for state funds or county deposits in the State of Missouri.

The bonds of the series outstanding, which you mention in your letter, do not show the date of issuance; therefore, we cannot determine which series and in what amounts they were issued after the Act became effective. In view of the terms of subsection (c) (2) of Section 4 of said Act, we are of the opinion that bonds issued prior to the effective date of the Amended Act are not of the same status as those issued after the effective date; hence, we are of the opinion that the bonds issued prior to said effective date would not be acceptable as security or collateral for state funds and county deposits unless they have since received the same guaranty and placed on equal parity with the new bonds.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK,  
Attorney General

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