

SAVINGS AND LOAN ASSOCIATIONS: In re investments of funds by county courts in savings and loan associations accounts.

December 5, 1946



Division of Savings and Loan Supervision
State of Missouri
Jefferson City, Missouri

Attention: Mr. J. C. Woodsmall, Chief Examiner

Dear Sir:

This is to acknowledge receipt of yours of December 4, wherein you request an official opinion from this department in the following statement of facts:

"Wish you would advise my office if it is a legal investment for a County Court to invest in Savings & Loan Associations accounts under Section 59, House Bill 481.

"Call your attention to the wording of sub-section 4, 'and for any deposit by a public official in a depository',"

The investments of county courts to which you refer in your letter we assume consist of the county school funds and also school funds of townships. Senate Bill No. 162, passed by the 63rd General Assembly and approved on November 26, 1945, relating to such investments, makes the following provision relative to the investing of the county school funds and school funds of townships. Section 10376 of said Senate Bill No. 162 in the portion thereof relating to the investment of the county school funds provides as follows:

"* * * On and after the effective date of this act, all real estate loans and investments now belonging to the county school funds, except those invested as hereinafter provided, shall be liquidated without extension of time upon the maturity thereof, and the proceeds thereof and the money then on hand belonging to said school fund of the county shall be reinvested in registered bonds of the United States, or in bonds of the state, or in approved bonds of any city or school

district thereof, or in bonds or other securities the payment of which is fully guaranteed by the United States Government, and shall be preserved as a county school fund; * * *"

Section 10383 of said bill, relative to the investment of the township school fund, provides as follows:

"On and after the effective date of this act, all real estate loans and investments now belonging to the capital of the school fund of any township, except those invested as hereinafter provided, shall be liquidated without extension of time upon the maturity thereof, and the proceeds thereof and the money then on hand belonging to said capital of township funds, shall be reinvested in registered bonds of the United States, or in bonds of the State, or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which is fully guaranteed by the United States government; * * *"

Section 59 of House Bill No. 481 of the 63rd General Assembly, which was approved on March 12, 1946, and to which you refer in your letter, provides as follows:

"Accounts of any association doing business in Missouri, whether chartered by the State of Missouri or another state or the United States of America, and which (a) holds certificate of insurance from the Federal Savings and Loan Insurance Corporation or (b) has a contingent or general reserve fund of at least five per cent of its total assets as shown by its last preceding semi-annual financial statement, (1) shall be legal investments, without any order of court, for funds of administrators, executors, guardians, curators, trustees and fiduciaries of every kind and nature, regardless of whether such administrator, executor, guardian, curator, trustee or fiduciary be a natural person, unincorporated association or corporation and of whether the funds thereof be subject to the jurisdiction or orders of any court of this state or any court of the United States within this state; and (2) shall be legal

investments for funds of banks, trust companies, all types of insurance companies, credit unions, business and manufacturing companies, mortgage loan companies, loan and investment companies, cemetery associations, and corporations or associations for benevolent, religious, scientific, educational or fraternal-beneficial purposes; and (3) shall be legal investments for all types of public pension, endowment and scholarship funds, either federal, state or municipal; and (4) shall be eligible security for any state, county or municipal deposit and for any deposit by a public official in a depository, in any instance where security for such a deposit is required by law. The provisions hereof are supplemental to, and amendatory of, any and all other laws regulating, relating to, or declaring what shall be legal investments or security for any such funds."

It will be noted that there are three classes set out in this section which are authorized to invest in accounts of a savings and loan association. From an examination of these three classes, we do not think that capital school funds and township school funds which are invested by county courts are included.

In your letter, you refer to subdivision 4 of Section 59 and inquire whether or not the phrase "and for any deposit by a public official in a depository" would authorize county courts to invest in such accounts. Said sub-section 4 seems to relate more to securities for which the accounts of savings and loan associations may be used, and we do not think it relates to investments of county courts. The provisions of Senate Bill No. 162, referred to above, seem to limit the securities in which county school funds and township school funds may be invested. It is in the nature of a special statute on the investment of such funds. We think it would take a strained construction of the statute to hold that investments by county courts of the county school fund and township school fund could be made in the accounts of savings and loan associations under the provisions of said Section 59 of said House Bill No. 481.

The provisions of Senate Bill No. 162, hereinbefore set out, describing securities in which county and township school

funds may be invested, follow the provisions of Section 7 of Article IX of the Constitution of 1945, which provides in part as follows:

"All real estate, loans and investments now belonging to the various county and township school funds, except those invested as hereinafter provided, shall be liquidated without extension of time, and the proceeds thereof and the money on hand now belonging to said school funds of the several counties and the city of St. Louis, shall be reinvested in registered bonds of the United States, or in bonds of the state or in approved bonds of any city or school district thereof, or in bonds or other securities the payment of which are fully guaranteed by the United States, and sacredly preserved as a county school fund. * * *"

According to the provisions of Section 59 of said House Bill No. 481, the accounts of a savings and loan association do not necessarily have to be guaranteed by the United States because, under sub-section (b) of the sentence relating to qualifications of accounts, it is provided that if the association has a contingent or general reserve fund of at least five per cent of its total assets as shown by its last preceding semi-annual statement that its accounts may be accepted for the investments described in that section or for securities described in sub-section 4 of that section.

We believe that this is the case in which the rule of statutory construction, namely "expressio unius est exclusio alterius," is applicable, and that only the securities mentioned in said Senate Bill No. 162 should be accepted as investments for county and township school funds.

CONCLUSION

It is therefore the opinion of this department that county courts would not be authorized to invest county and township school funds in savings and loan association accounts.

Respectfully submitted,

APPROVED:

TYRE W. BURTON
Assistant Attorney General

J. E. TAYLOR
Attorney General

TWB:VLM