

January 8, 1975

OPINION LETTER NO. 2
Answer by Letter - Burns

Honorable Ed Bohl
State Representative, District 115
c/o House Post Office
State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Bohl:

This is in answer to your opinion request asking whether a fourth class city has authority through the city treasurer to invest surplus funds in savings accounts in a savings and loan association insured by the Federal Savings and Loan Insurance Corporation to the extent that the accounts are fully insured by the FSLIC even though such fourth class city has selected a banking institution as its city depository under provisions of Section 93.355, RSMo.

We enclose Opinion No. 134, rendered May 13, 1969, to Robert H. Martin, which holds that under provisions of Section 95.355, RSMo 1969, the board of aldermen of a fourth class city can select only one banking institution as a depository for city funds.

We also enclose Opinion No. 148, rendered October 5, 1970, to Zane White, holding that under the provisions of Section 369.325, RSMo, a municipality or political subdivision in this state may legally invest funds in accounts of a savings and loan association which holds a certificate of insurance from the Federal Savings and Loan Insurance Corporation. In that opinion there was no discussion of the meaning of the term "investments" and in view of the repeal of Section 396.325 and the enactment of Section 369.194, RSMo Supp. 1973, we believe it unnecessary to determine the effect of the holding in the

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1970 opinion insofar as "investments" by a municipality or political subdivision are concerned.

Section 369.194.1, RSMo Supp. 1973, provides as follows:

"Savings accounts in insured associations are legal and proper investments or depositaries for fiduciaries of every kind and nature, all political subdivisions or instrumentalities of this state, insurance companies, business and nonprofit corporations, charitable or educational corporations or associations, all financial institutions of every kind and character, all pension, endowment and scholarship funds both public and private, and each and all of them may invest funds in savings accounts in such associations. The supervisor shall by regulation permit associations to pledge funds or assets in connection with the investment of public funds in savings accounts of associations, and may provide that savings accounts in associations shall be legal investments for any persons, firms, corporations or entities not herein specifically referred to."

Such section provides that savings accounts in insured associations are "legal and proper investments or depositaries" for "all political subdivisions or instrumentalities of this state." Read literally, the reference to "depositaries" does not make sense because a savings and loan "account" cannot be a depositary. It is clear that the meaning of the provisions of such section relating to "depositaries" is that an insured savings and loan association is a "legal depositary" for the funds of "all political subdivisions or instrumentalities of this state." We believe that it is also clear that insofar as political subdivisions and instrumentalities of the state are concerned, that when moneys of such governmental entities are placed in savings accounts in insured savings and loan associations the savings and loan associations becomes a "depositary" and that there is no distinction between "investment" in a savings and loan account and selecting such savings and loan association as a "depositary" of the governmental entity funds. It is therefore our view that when a political subdivision or other instrumentality of the state deposits its funds in savings accounts with insured savings and loan associations such savings and loan association becomes a "depositary" of such governmental entity.

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As pointed out in enclosed Opinion No. 134 - 1969, fourth class cities are authorized to select only one "depository." In view of the provisions of Section 369.194, it is our view that Opinion No. 134 should be withdrawn insofar as it requires that the "depository" be a banking institution. However, we believe that the holding in Opinion No. 134 - 1969 is correct in its holding that there be only one depository at any one time for a fourth class city. Therefore, it is our view that when a banking institution has been selected as a depository for the funds of a fourth class city, funds of such city cannot be placed in a savings and loan association as this would constitute the selection and utilization of another depository contrary to the provisions of Section 95.355, RSMo.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 134 (Withdrawn)
5/13/69, Martin

Op. No. 148
10/5/70, White