Opinion No. 58-232

December 12, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Joel B. Burr, Jr., Assistant Attorney General

TO: Mr. Walter R. Kegel, District Attorney, First Judicial District, County Court House, Santa Fe, New Mexico

QUESTION

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May suppliers assign lease-purchase agreements entered into with a county and the rentals due thereon to financing organizations of a class generally known as "Acceptance Companies"?

CONCLUSION

Yes.

OPINION

ANALYSIS

It is our understanding that there are several counties in the First Judicial District which have lease-purchase agreements with various suppliers who have expressed a desire and need to assign such agreements and the rentals due thereon to financing organizations of a class generally known as "Acceptance Companies". We are also informed that these so-called "Acceptance Companies" are empowered by their Articles of Incorporation to engage in the business of discounting commercial paper, including contracts, mortgages, leases, etc., lending money and generally engaging in financial and commercial transactions. You also state that the duties of these suppliers with respect to servicing and other obligations under the lease-purchase agreements will remain unchanged. With this factual situation in mind, we now turn to your specific question.

Section 27-1-54, N.M.S.A., 1953 Compilation, provides in part as follows:

"Assignments of moneys due or to become due from the state of New Mexico or from any municipal corporation, county, or political subdivision or agency thereof under the terms of any construction, improvement, maintenance or repair contract or contracts for equipment or supplies shall be permitted subject to the following limitations and restrictions:

(a) The assignment must, subject to subparagraph (d) hereof, be to a bank, trust company, or other **financing institution."** (Emphasis ours).

Thus, if these so-called "Acceptance Companies" fall within the definition of a "financing institution", as such term is used in the above quoted statute, the assignments contemplated would meet all legal requirements. We conclude that they do. No definition of the term in question is found in the statute. However, it appears evident to us that the Legislature intended to cover the entire field of financial corporations who employ moneyed capital for the purpose of buying and discounting commercial paper, inasmuch as Section 27-1-54, supra, does not limit the assignment of moneys due from the state to banks alone, but also permits such assignments to trust companies and other financial institutions.

The term is a broad one and has been held in numerous cases to include savings and loan associations, and banking corporations of all types. See Second Federal Savings & Loan Ass'n. of Cleveland v. Evatt, 141 Ohio St. 616, 49 N.E. 2d 756, 758; Todd v. Brock, Ind., 14 N.E. 2d 902; Ohio Citizens Trust Co. v. Evatt, 146 Ohio St. 30, 63 N.E. 2d 912, 914. And in the case of State v. National Credit Co., 181 So. 769, the Supreme Court of Alabama held that a partnership engaged in the business of buying and discounting commercial paper, and the retention of title contracts given for motor vehicles was a "financial institution" for purposes of the imposition of an excise tax. It should be noted that in the last cited case, the National Credit Company was engaged in a business almost identical with the type of business of financing organizations generally known as "Acceptance Companies".

In view of the interpretation we have given Section 27-1-54, supra, and the authority cited in support thereof, we conclude that suppliers may lawfully assign leasepurchase agreements entered into with a county and the rentals due thereon to financing organizations of a class generally known as "Acceptance Companies".