

Opinion No. 59-135

September 2, 1959

BY: HILTON A. DICKSON, JR., Attorney General

TO: Mr. J. C. Hester State Investment Officer State Investment Council P. O. Box 1356
Santa Fe, New Mexico

{*206} This is written in reply to your recent request for an opinion on the following question:

Are Capehart mortgages issued by virtue of Title VIII of the National Housing Act of 1955, as amended, acceptable for investment of public funds by this Council?

In answer to this question, it is our opinion that:

Yes, these mortgages are legally acceptable for investments under Section 9, Chapter 179, Laws 1957, codified as Section 11-2-8.12, N.M.S.A., 1953 Compilation, P.S., which reads in germane part as follows:

"A. Bonds, notes, or other obligations of the United States, **or those guaranteed** by, or for which the credit of the United States is pledged for the payment of the principal and interest or dividends thereof; . . ." (Emphasis Supplied)

It would seem from the above quoted section that if these obligations were in fact guaranteed by the United States as to principal and interest, then they would be legally acceptable for investment by the Investment Council. The provisions of the Federal statute authorizing these obligations indicate that upon default by the mortgagor the United States will issue to the mortgagee United States guaranteed registered debenture bonds in an amount to cover 100% of the insured advances. From the information we have available, this means that the principal and the interest will be included in the face {*}207} value of the United States bonds. This being true, these obligations meet the requirement of the above section in that both the principal and interest of the obligation is insured by the United States government.

It is therefore our opinion that the Capehart mortgages issued under the provisions of the National Housing Act of 1955, as amended, are legally acceptable for investments by the State Investment Council. The propriety of investing public funds in these obligations is, of course, left to the Council in the exercise of its sound discretion.

By: Boston E. Witt

Assistant Attorney General