

Opinion No. 59-160

October 6, 1959

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

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

{*250} This is written in reply to your recent request for an opinion on whether the Investment Council can make a definite commitment for the purchase of Capehart Mortgages prior to the actual investment in them in view of the language of Section 11-2-8.10, N.M.S.A., 1953 Comp. (PS).

In answer to your question, it is my opinion that: Yes, the Council can make such a commitment.

The germane portion of the above cited statute reads as follows:

"Securities or investments purchased or held may be sold or exchanged for other securities and investments; Provided, however, that no sale or exchange shall be at a price less than the going market at the time the securities or investments are sold or exchanged."

It should be noted that this portion of the above cited statute deals only with securities and investments which have been purchased and are now on hand. The Section, with reference to these securities, prohibits their sale or exchange at a price less than the market. It does not contain a prohibition on the securities with a value less than the going market on those securities sold.

This section is not a prohibition to making a commitment on Capehart Mortgages, since when the commitment is made, no securities on hand will be sold. When the time for purchase arrives in all probability, no securities will be sold since the funds to be used for the purchase of these mortgages will come from funds which have become available because of the maturity of presently held obligations. If, however, the Council were to sell presently held securities to purchase these mortgages at the purchase date, no prohibition exists except that the sale price of the held securities be at the then going market which would be normal in most all cases. It is therefore our opinion that this section does not prohibit the Council from making a prior commitment on the purchase of Capehart Mortgages.

I have searched the Statutes and have found no provision which would prohibit the Council from making a prior purchase commitment such as the one in question.

Boston E. Witt,

Assistant Attorney General