

Opinion No. 60-165

September 21, 1960

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

TO: Mr. Joseph B. Grant State Bank Examiner State Banking Department Santa Fe, New Mexico

QUESTION

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Credit unions organized under § 48-19-1 et seq., N.M.S.A., 1953 Compilation, have been investing their funds in various securities, including common stocks, railroad trust certificates and building bonds of churches.

1. Are such investments legal under the standards established in § 48-19-4, N.M.S.A., 1953 Compilation?
2. Does this Department have the authority to regulate or control investments by credit unions?

CONCLUSIONS

1. Yes.
2. See analysis.

OPINION

{*554} ANALYSIS

The investment standards for credit unions are found in § 48-19-4, supra, which reads, in relevant part, as follows:

". . .

(e) To invest in any investment legal for savings banks or or trust funds in the state.

. . ."

This section limits investments by credit unions to those permissible for savings banks and trusts within the state. Section 48-4-1, N.M.S.A., 1953 Compilation, lists permissible investments for savings banks. It permits investments only in securities of the Federal Government, the several states and their political subdivisions and first mortgage bonds

of steam railways, water, gas, light, telephone and industrial corporations which have paid a 4% dividend on their equity stock for the last five years. However, the investment standard for trustees in investing trust funds in the state is found in § 33-1-16, N.M.S.A., 1953 Compilation, which establishes the prudent man rule and then provides:

". . . Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, and securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940, as from time to time amended, . . ."

This section gives a trustee, and therefore a credit union by virtue of § 48-19-4, supra, the power to invest in almost every conceivable type of security, keeping in mind the prudent man rule. The answer to your first question is then, yes, credit unions may invest in the mentioned securities.

The State Bank Examiner has supervisory control over credit unions and may revoke or suspend charters after hearing for a violation of any of the provisions of § 48-19-1 et seq., supra. See § 48-19-6, N.M.S.A., 1953 Compilation (P.S.). One of these provisions is found in § 48-19-1, supra, which sets forth the purpose of credit unions. It reads as follows:

{*555} "A credit union is a cooperative society, incorporated for the twofold purpose of promoting thrift among its members and creating a source of credit for them at legitimate rates of interest for provident and productive purposes."

It is our opinion that if a credit union goes beyond its purpose, as outlined above, in investing its deposits, your department has the authority to issue an order instructing the credit union to correct the condition or have its charter revoked. This would be done after a determination by you that the credit union is no longer operating within its statutory purpose of the promotion of thrift and providing a source of funds for credit.

By: Boston E. Witt

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