

Opinion No. 62-59

April 13, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

TO: Mr. Robert D. Castner, State Auditor, State Capitol, Santa Fe, New Mexico

QUESTION

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May the New Mexico Veterans' Service Commission, as guardian, invest funds held in trust on behalf of incompetent veterans, in savings and loan associations?

CONCLUSION

See analysis.

OPINION

ANALYSIS

Section 74-6-13, N.M.S.A., 1953 Comp., a part of our Uniform Veterans' Act, provides as follows:

"Every guardian shall invest the surplus funds of his ward's estate in such securities or property **as authorized under the laws of this state, but only upon prior order of the court**; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States, and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the Veterans' Administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account." (Emphasis supplied)

We must look to our law on guardian and ward to find the proper type of investments authorized. Section 32-1-34 provides:

"It shall be lawful for any guardian for minors and for any guardian or committee for incompetent or insane persons, subject to the approval of the court, to invest moneys belonging to the ward in insured shares of insured federal savings and loan associations or to deposit such moneys in an amount not exceeding \$ 5,000.00 in any bank which is a member in good standing of the Federal Deposit Insurance Corporation.

Said deposit may be in a savings account, certificate of deposit or any other form of deposit which is guaranteed by the Federal Deposit Insurance Corporation.

If the deposit is made in an insured federal savings and loan association and if it is made with the prior approval of the Court, the investment or deposit is proper.

It should be noted, however, that a deposit in a state savings and loan association is not proper whether or not such association is federally insured. The statute clearly restricts investment to federal associations. The fact that Sec. 32-1-34 was enacted in 1935 might explain this fact, but we must take the law as we find it.