

Opinion No. 66-12

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BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Mr. Robert G. Mead, State Investment Officer, State Investment Council, Box 966,
Santa Fe, New Mexico 87501 Attention: Mr. Robert Short

QUESTION

FACTS

The Farmer's Home Administration is authorized to guarantee loans which are made pursuant to the Consolidated Farmers' Home Administration Act of 1961 or other related Federal laws. In order to procure such a loan the borrower makes a promissory note payable to the order of the United States and secures such note by a mortgage of his property to the United States of America acting through the Farmers' Home Administration, United States Department of Agriculture. The Farmers' Home Administration then advises the particular lender in question to forward the money to the borrower and at the same time endorses the note to such lender. Further, by an insurance endorsement, the Farmers' Home Administration guarantees to the lender payment of the note together with interest, if the borrower should default. No assignment of the mortgaged property securing the note is taken by the "lender" from the Federal Government and the lender has no interest in the mortgaged property.

QUESTIONS

1. May the State Investment Council act as "lender" under the facts described above and lawfully invest in Farmers' Home Administration loans?
2. Are such loans authorized if the mortgaged property securing the loans is not located within the State of New Mexico?

CONCLUSIONS

1. Yes.
2. Yes, providing the Council does not hold the mortgages.

OPINION

{*15} ANALYSIS

Under the facts as described above, the State Investment Council is, in effect, purchasing a note which is guaranteed by the Federal government. Such investment is clearly authorized by Section 11-2-8.12 (A) N.M.S.A., 1953 Compilation (P.S.), which allows investments in "bonds, {*16} 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."

Your second question arises because of paragraph F of Section 11-2-8.12, supra. This provision authorizes the Council to invest in:

"Obligations **secured by mortgages** constituting a first lien upon real estate **located within the state of New Mexico**, which are fully insured or guaranteed as to the payment of the principal and interest thereof by the government of the United States or by any authorized agency thereof, **including mortgages securing loans insured** under the National Housing Act or **the Farmers' Home Administration Act** as amended from time to time. **The state investment officer may enter into conventional agreements for the servicing of such mortgage loans** and the administration of the receipts therefrom, and any such servicing agreement may contain such reasonable and customary provisions as the state investment officer may deem advisable and as may be agreed upon, with respect to such matters as the taking and holding of title in the name of the servicing agent for the benefit of the state investment officer; the physical custody of the obligations and mortgages serviced by the servicing agent; the deduction of the servicing agent's fee (in an amount which shall not annually exceed one-half of one per cent of the principal balance of the mortgages serviced from time to time outstanding) by the servicing agent, prior to remittance of the proceeds; the periodic remittance of the net proceeds received in payment on all obligations so secured to the state treasurer as custodian of the permanent fund; the authority and duty of the servicing agent with respect to the collection of any such obligation in default, and the effectuation of the applicable federal insurance or guarantee thereof; and other appropriate matters." (Emphasis supplied.)

The above cited statute concerns "mortgage loans" including those of the Farmers' Home Administration and requires that the real estate securing such loans be located within the State of New Mexico. We deem this law to be inapplicable to the investment in question, because it is not a mortgage loan. The investment involves the simple purchase of a note which is clearly an authorized investment under paragraph A of 11-2-8.12, supra. As far as the State Investment Council is concerned, no mortgage is involved. The mortgage of the property is to the Federal government and the State Investment Council has no interest in the mortgage whatsoever. If the borrower should default on his note, the State Investment Council would look to the Federal government for reimbursement through the insurance guarantee and not to any possible recovery by way of a mortgage foreclosure proceeding. In this instance the mortgage is not held by the Council, as the law obviously contemplates, but is held and owned by the Farmers' Home Administration. Since the Council has no interest in the mortgage, it obviously is not concerned as to the location of the land securing the mortgage and loan. The location of the land would be of importance if it were mortgaged to the Council since it

would then represent to some extent the security for the loan and obviously such security could be far better protected and legally controlled by the mortgagor if located in the State. However, as stated previously the security in this instance is insurance from the Federal government and not from the land itself. Thus, the location of the land involved in a Farmers' Home Administration loan, when the State Investment Council does not hold a mortgage thereon, has no effect whatsoever upon the legality of investment.