

Opinion No. 66-93

July 26, 1966

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

QUESTION

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May the State Investment Council legally enter into an agreement with a mortgagor to defer the payment of principal or interest on a Federally insured mortgage investment which is held by the Council?

CONCLUSION

Yes, so long as the original maturity date of the promissory note securing the mortgage investment is not changed.

OPINION

{*126} ANALYSIS

The question recited above occasionally arises when a mortgagor requests an extension of time in order to meet his installment payments on his note to the Council, which, if granted, will keep him from going into default. Such extension of time must be approved by the Federal Housing Administration, the insurer of the mortgage to the Council, before the Council would grant the request. The time extension also involves a subsequent acceleration or increase in the amount of the installment payments under the mortgage to the Council, because the ultimate maturity date of the promissory note to the Council remains unchanged.

A deferment of this type, we believe, can be validly granted by the State Investment Council under the authority provided in Section 11-2-8.11, N.M.S.A., 1953 Compilation, set forth in its entirety as follows:

"In the event of default in the payment of principal, or interest on, an investment made, the financial officer is authorized to institute proper proceedings to collect matured interest and principal; the financial officer may, with the consent of the governor, after consultation with the investment council, accept for exchange purposes refunding bonds or other evidences of indebtedness at interest rates to be agreed upon with the obligor.
The financial officer with the approval of the governor and after consultation with

the council is authorized to adjust past due interest or principal in default."
(Emphasis supplied.)

The above-cited section expressly authorizes the Council with the approval of the Governor to "adjust" past due interest or principal on investments held by said Council and thus furnishes ample authority for the type of transaction contemplated in your question. Further, we believe that such contractual arrangements providing for time extensions of installment payments is authorized under the discretionary authority in the handling of investments granted to the Council under Article XII, Section 7 of the New Mexico Constitution.

However, great care should be exercised by the Council in entering into any agreement of this nature, because of the Constitutional restriction which prohibits the postponement of any obligation owed to the State, Article IV, Section 32, New Mexico Constitution. This constitutional provisions is set out as follows:

"No obligation or liability of any person, association or corporation held or owned by or owing to the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court. Provided that the obligations created by Special Session Laws 1955, Chapter 5, running to the {127} state or any of its agencies, remaining unpaid on the effective date of this amendment are void. (As amended November 4, 1958.)"

So long as the ultimate maturity date of the note securing the mortgage to the Council remains unchanged, we do not believe that any interim deferment of principal or interest would be construed as a postponement of an obligation under Article IV, Section 32, above.

The standard mortgage note used by the Investment Council provides that "if the default is not made good prior to the due date of the next such installment, the entire principal sum with its accrued interest shall at once become payable without notice at the option of the holder of this note" Obviously if the afore-said option is not exercised no debt arises and an agreement involving an extension of time with respect to such installment payments between the mortgagor and the holder of the note (the Investment Council) could not be interpreted as an arrangement providing for postponement of an obligation.

In conclusion, we point out, that the Investment Council in this matter, as well as all others, is to be guided pursuant to the investment standards set down in Article XII, Section 7 of the New Mexico Constitution and Section 11-2-8.13 of the Investment Act, N.M.S.A., 1953 Compilation. The law allows the Council to enter into the above-described agreements, but the wisdom or policy concerning such agreements is another matter. The Council as trustee of the permanent fund must act with the utmost care in all of its relations with the beneficiaries of the funds. Therefore, decisions of the Council with respect to modification agreements involving extensions of time for payments of

principal and interest on mortgage investments must follow "the prudent man" doctrine and standards set forth in the constitution and statute cited above.