

Opinion No. 68-86

August 14, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: L. M. Humphrey Deputy Treasurer State of New Mexico Land Office Building Santa Fe, New Mexico

QUESTION

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May United Student Aid Fund loans be used as collateral by depositories of public moneys under Section 11-2-18, N.M.S.A., 1953 Compilation.

CONCLUSION

See analysis.

OPINION

{*138} ANALYSIS

Section 11-2-18, N.M.S.A., 1953 Compilation sets forth the types of securities that may be used as collateral for deposits of public moneys as follows:

"A. Deposits of public moneys may be secured by bonds or treasury certificates of the United States, bonds of the Home Owners Loan Corporation, federal farm loan bonds, and **any other bonds or securities guaranteed by the United States**, bonds of the state of New Mexico, debentures issued by the state highway commission of the state of New Mexico, heretofore or hereafter issued pursuant to legislative authority to anticipate the proceeds of the collection of any or all of the gasoline excise taxes, motor vehicle registration fees and property and other taxes, where it is provided by law that the proceeds of the collection of such fees and taxes to the extent sufficient to pay the principal and interest of such highway debentures shall have been pledged for the payment of the same, bonds of any county of this state, or any of the legal subdivisions thereof, including drainage or irrigation district bonds on which all interest due had been paid for the five years immediately preceding the acceptance thereof as security for any deposit; general obligation and revenue bonds of any county of the state or any political subdivision or institution of the state which have been refunded under the Institution Bond Act [11-9-1 to 11-9-4, 11-9-6 to 11-9-26] or under sections 11-6-23 through 11-6-33 or 73-29-14 through 73-29-14.6 New Mexico Statutes Annotated, 1953 Compilation, and which are secured by a deposit into an irrevocable trust in a commercial bank of direct obligations of the United {*139} States or of obligations of agencies of the United States; first lien revenue bonds of the state and any of its political subdivisions,

including state institutions, on which principal and interest has been paid without default for the five years immediately preceding the acceptance thereof as security for any deposit if the revenue bonds are rated by a recognized national rating agency as 'A' or above." (Emphasis added).

If United Student Aid Fund loans are guaranteed by the United States government, the only question is whether these loans may be classified as "securities" under Section 11-2-18, supra. These loans are evidenced by promissory notes of the students borrowing the money and thus we must look to see if promissory notes may be classified as "securities."

The words "security" and "securities" have no exactly defined legal definition. See 79 C.J.S., Security; Securities, p. 944. The term is used in both a broad and narrow sense. In a popular sense as well as in a legal sense "securities" embraces promissory notes. However, it appears to be a matter of statutory construction in determining the meaning to be given to the term "securities" in any particular enactment of the legislature.

The purpose of statutory construction is to determine legislative intent. We believe that it was the primary intention of the legislature in enacting Section 11-2-18, supra, to secure the deposit of public money with collateral that is guaranteed by the United States government. We therefore believe that the legislature intended to use the term "securities" in its broadest sense when it enacted Section 11-2-18, supra. Accordingly it is our opinion that Student Aid Fund loans may be accepted as collateral for deposits of public moneys if such loans are guaranteed by the United States government.

It is the understanding of this office that in the past Student Aid Fund loans made in the State of New Mexico have not been guaranteed by the United States government. We have been told that future loans may be guaranteed. The nature of this guarantee, however, is very important. It will be necessary for these loans to be guaranteed by the full faith and credit of the United States government before they can be used as collateral for deposits of public funds. A guarantee limited to the money appropriated to a particular fund is not a sufficient guarantee. Additional information will be necessary before this office can determine whether future loans may be used as collateral for deposits of public money.

By: Gary O'Dowd

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