

**Opinion No. 77-27**

October 19, 1977

**OPINION OF:** Toney Anaya, Attorney General

**BY:** Jill Z. Cooper, Assistant Attorney General

**TO:** Mr. Edward M. Murphy State Treasurer P.O. Box 608 Santa Fe, New Mexico 87503

NEW MEXICO MORTGAGE FINANCE AUTHORITY-PUBLIC MONEY-DEPOSITS. The bonds of the Mortgage Finance Authority may be pledged as security for deposits of public money pursuant to Section 11-2-18.1(A) NMSA 1953 Comp.

**QUESTIONS**

Are New Mexico State Mortgage Finance Authority Bonds pledgable as securities for deposits of public money under Section 11-2-18.1, NMSA, 1953 Comp.?

**CONCLUSIONS**

Yes.

**ANALYSIS**

Public money entrusted to the State Treasurer or county or municipal treasurers may be deposited in qualified state banks pursuant to Section 11-2-7, NMSA, 1953 Comp. Section 11-2-18.1(A), NMSA, 1953 Comp., requires that such deposits be "secured by securities of the United States, its agencies or instrumentalities, or by securities of the State of New Mexico, its agencies, instrumentalities, counties, municipalities, or other subdivisions, or by securities, including student loans, that are guaranteed by the United States or the state of New Mexico" (emphasis added). The question here is whether New Mexico Mortgage Finance Authority bonds issued pursuant to the Mortgage Finance Authority Act, Sections 13-19-1 to 13-19-27, NMSA, 1953 Comp., may be accepted as security for deposits.

**OPINION**

The New Mexico Mortgage Finance Authority was established by the legislature "for the benefit of the people of the state." See Sections 13-19-2(F), 13-19-18(A), supra. It is defined as "a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality." Section 13-19-4(A), supra. This office has already ruled that the Authority is not, under that definition, a state agency. See Opinion of the Attorney General No. 75-48, dated September 10, 1975. Still, the Authority is, by definition, a governmental instrumentality and, to the extent that it performs a public

function for the state, it is a state governmental instrumentality. As we explained in Opinion No. 75-48:

{\*164} The State has delegated the governmental power to perform a state function to the authority and it has provided the mechanism for the authority to exercise such power independent of the state.

Thus, although the Authority is not a state agency, it is a state instrumentality and as such, its bonds are acceptable as security for deposit of public money under Section 11-2-18.1(A), supra.

Further, we would add that Section 13-19-17, supra, provides specifically that the bonds of the Authority are securities in which any institution "authorized to invest in bonds or other obligations of the state, may properly and legally invest funds." It would follow, therefore, that if the legislature expressly intended that institutions may legally and properly invest in the bonds of the Authority as they do in state bonds, then institutions holding Authority bonds should be able to pledge them as security as they do with state bonds.

#### **ATTORNEY GENERAL**

Toney Anaya, Attorney General