

Opinion No. 87-04

February 17, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Scott D. Spencer, Assistant Attorney General

TO: Mr. Arthur L. Trujillo, Deputy Director, Financial Institutions Division, Regulation and Licensing Department, State of New Mexico, Bataan Memorial Building, Room 137, Santa Fe, New Mexico 87503 Re: Mutual Fund Investments

QUESTIONS

1. Whether state chartered banks and savings and loan associations are permitted to invest in mutual funds.
2. Whether mutual funds may be pledged as collateral for deposits of public funds.

CONCLUSIONS

1. Yes.
2. No.

ANALYSIS

By your use of the term "mutual funds" we assume that you are referring to open-end management investment companies registered with the Securities and Exchange Commission. With respect to state chartered banks, Section 58-1-22A(8) NMSA 1978 provides that a state bank may "invest in any obligation in which a national bank is authorized to invest at the time of making the investment, notwithstanding any provisions to the contrary in the Banking Act." Pursuant to Banking Issuance BC-220 from the Administrator of National Banks, national banks currently have the authority to purchase investment company shares. A national bank may purchase for its own account shares of investment companies as long as the portfolio of such companies consist solely of obligations that are eligible for purchase by national banks for their own account pursuant to the provisions of paragraph 7 of 12 U.S.C. 24. That section lists investment securities in which banks are eligible to invest. Banking circular BC-220 contains other restrictions on the purchase of investment company shares by national banks. Considering that national banks have such authority, state banks may purchase investment company shares for their own account as long as the purchase falls within the constraints of banking issuance BC-220 and the federal law cited therein.

With respect to savings and loan associations, Section 58-10-45 NMSA 1978 lists authorized investments. That section does not specifically allow savings and loan

associations to invest in investment company shares. Section 58-10-50 NMSA 1978 provides, however as follows:

Notwithstanding any other provision of the Savings and Loan Act, every company, association or corporation licensed under the provisions of the savings and loan laws of this state whose accounts are insured by the federal savings and loan insurance corporation or its successor, and which is a member of a federal home loan bank or its successor, shall possess in addition to the rights, powers, privileges, immunities, and exceptions provided by the Savings and Loan Act, such additional rights, powers, privileges, immunities, and exceptions which the supervisor may grant, extend and provide for by regulations promulgated pursuant to the provision of Sections 58-10-72 and 58-10-73 NMSA 1978; provided, however, that every such additional right, privilege, immunities and exception so granted, extended and provided by the supervisor is also possessed by federally chartered associations at the time such regulation is promulgated.

Regulation 80-5S&LB, issued by the Financial Institutions Division on December 31, 1980, allows a state chartered savings and loan association to invest in shares in any open-end management investment company that is registered with the Securities and Exchange Commission and with the New Mexico Securities Bureau, as long as its portfolio is restricted to investments that the association is authorized to invest in pursuant to "law." Federally chartered savings and loans associations have been granted authority to invest in investment companies pursuant to 12 U.S.C. 1464(C)(1)(Q) and 12 CFR 545.76.

It is therefore our opinion that state chartered savings and loans may invest in shares in any open-end management investment company as long as the company portfolio is restricted to investments listed in Section 58-10-45 NMSA 1978, or as allowed federal savings and loans by federal law. Investment is restricted by regulation 80-5S&LB, 12 U.S.C. 1464, and 12 C.F.R. 545.76.

With respect to your second question, Section 6-10-16 NMSA 1978 provides as follows:

Deposits of public money shall 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.

Section 6-10-16.1 provides: "All deposits of public funds made after the effective date of this act shall be secured by securities as defined in Section 6-10-16 NMSA 1978 in the amount required by law."

Even though investment companies may purchase securities listed in Section 6-10-16 NMSA 1978, shares in investment companies, not being listed in that section, may not

be used to secure the deposit of public funds. It is our opinion that Section 6-10-16 NMSA 1978 contemplates that public money be directly secured by the securities listed.

ATTORNEY GENERAL

HAL STRATTON Attorney General