

Opinion No. 33-667

October 13, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mr. T. A. Whelan, Attorney at Law, Lovington, New Mexico.

{*84} With reference to your letter of October 6th, 1933, asking for an opinion as to the power of the Town of Lovington to make a loan of \$ 2,000.00 to an individual, said loan to be adequately secured, under the circumstances outlined in said letter.

In McQuillan Municipal Corporation, 2nd ed. Section 2321, I find the following statement:

"Seldom have municipal corporations surplus moneys for loan or investment. But where such condition of affairs permits itself, the municipality has power to loan or invest in proper securities, unless it should be forbidden by statute."

The same section also goes on to say that money raised by appropriation for special purposes cannot be loaned, even though it may loan its accumulated sinking fund. Also, that if money is loaned, it is not a defense to its being collected, that the municipality had no power to loan same.

Our Constitution, Section 4 of Article 8, contains the following provision: "* * * All public moneys not invested in interest bearing securities shall be deposited in national banks in this state or in banks or trust companies incorporated under the laws of this state. * * *"

Municipalities, or other boards, have the following general powers, subject, of course, to other limitations imposed by law:

"To control the finances and property of the corporation."

"To appropriate money for corporate purposes only, and to provide for the payment of debts and expenses of the corporation."

These general powers and the rule enunciated by McQuillan, supra, seem to have been qualified or limited by Chapter 175, Section 4, Laws of 1933, if not by the constitutional provision cited, as I am inclined to believe, which said provision is as follows:

"* * * County, City or Town treasurers, by and with the advice and consent of their respective boards of finance charged with the supervision and control of the respective funds, shall have the power to invest all sinking funds or moneys remaining unexpended from the proceeds of any issue of bonds or other negotiable securities of any county, city or school district which are now or may hereafter by law be entrusted to their care

and custody and all moneys not immediately necessary for public uses of such counties, cities, towns or school districts in bonds or negotiable securities of the United States of America, the State of New Mexico, or of any county, city, town or school district of New Mexico, if such city, town or school district has a taxable valuation of at least one million dollars, and shall not have defaulted in the payment of any interest or sinking fund obligation or failed to meet any bonds at maturity at any time within five years last preceding."

Section 112-126, 1929 Code is as follows:

"Temporary investment excess funds. If at any time the state treasurer, or the treasurer of any county, city or town or board in control, shall have on hand more money than can be divided equitably and ratably between depositories qualified as in this act provided, such treasurer may, with the approval of the proper board of finance, temporarily invest such excess funds in United States bonds or treasury certificates {*85} under such rules and regulations as may be prescribed by the state board of finance.

Any such board of finance may, in its discretion, provide for the safekeeping of such United States bonds or treasury certificates by the federal bank of Kansas City or the federal reserve bank of Dallas, and pay the reasonable expense thereof out of the interest on such bonds or certificates or out of the interest on deposits fund. No treasurer shall be chargeable upon his official bond or otherwise for any fluctuation in the market value of such United States bonds or treasury certificates."

Section 112-201, 1929 Code is as follows:

"Time deposits may be had not exceeding six months -- interest and surety. That any board of finance may, whenever in its opinion such a course is advisable and the public moneys under its control, or any part thereof, will not be needed immediately for public purposes, place such funds on time deposit taking the certificate of deposit or other evidence of indebtedness of the bank receiving such deposit; Provided, however, that no time deposit shall be for a period longer than six months and all such deposits shall be secured as provided by law and interest shall be paid on such deposits at the rate of three per cent per annum."

It is apparent to me therefore that the only method of investing funds of municipal corporations is as set forth in the various acts herein cited, and that the loan contemplated by the Town of Lovington would be without authority of law. The constitutional provision standing alone, under the general rule, would perhaps permit the loan in your case, but the Legislature has defined the "interest bearing securities" mentioned in the constitution, and the investment of public funds are limited to those securities provided for by legislative act.