

MAINE STATE LEGISLATURE

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September 8, 1933

Honorable Thomas A. Cooper
Bank Commissioner
Augusta, Maine

Dear Mr. Cooper:

I am in receipt of your communication of September 5 in which you request that the Attorney General furnish you with an opinion as to the effect of the Home Owners' Loan Act of 1933, passed by the Congress of the United States and approved by the President on June 13, 1933, in the following particulars:

1. Are bonds issued under the provisions of this Act legal investments for savings banks, state banks, trust companies and loan and building associations of Maine?
2. Can the bonds issued under the provisions of this Act be accepted by savings banks, state banks, trust companies, and loan and building associations of Maine in exchange for delinquent mortgages now held by them?

The Home Owners' Loan Corporation is a corporation organized under the Federal Home Owners' Loan Act of 1933, approved June 13, 1933. Its entire capital, not exceeding \$200,000,000, is subscribed by the Government of the United States. The corporation is authorized to issue bonds in an aggregate amount not to exceed \$2,000,000,000 which may be sold by the corporation or exchanged as provided in other portions of the Act.

The savings banks and institutions for saving of Maine are limited in their investments. Among other legal investments are the following:

1. The bonds and other interest bearing obligations of the United States; and the interest bearing obligations of any debtor or promisor for the payment of the principal and interest of which the faith and credit of the United States government are pledged.

2. The bonds or other interest bearing obligations of any federal land bank or joint stock land bank organized under any act of Congress enacted prior to the fourth day of April, 1923.

The bonds issued by the Home Owners' Loan Corporation are not the bonds of the United States, and they are not the bonds of any federal land bank or joint stock land bank organized under any act of Congress prior to the fourth day of April 1923. They are the bonds of a corporation created by the United States. It is specifically provided in said Loan Act as follows:

"Such bonds shall be issued in such denominations as the board shall prescribe, shall mature within a period of not more than eighteen years from the date of their issue, shall bear interest at the rate of four per centum per annum and shall be fully and unconditionally guaranteed as to interest only by the United States, and such guarantee shall be expressed on the face thereof."

To come within our statute, the faith and credit of the United States must be pledged to provide for the payment of both principal and interest. Therefore, these bonds are not a legal investment for our savings banks and institutions for saving.

As to your second question, where there exists delinquent mortgages held by our banking institutions, there is involved a determination or policy to be pursued in each individual case. Savings banks and the savings departments of state banks and trust companies are authorized by law to invest,--

"In notes or bonds secured by first mortgages of real estate in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and Vermont to an amount not exceeding sixty percent of the mortgage value of such real estate. No bank shall have more than sixty percent of its deposits invested in such mortgages.

"Owing to the present depressed condition in all lines of business which has continued for the past few years many home owners have been unable to meet their interest payments. Their real estate valuations have decreased to such an extent as to make their present valuations little, if any, in excess of the amount of their mortgage. In some cases the banks have been compelled to institute foreclosure proceedings to protect their depositors against loss. It is probable that in many instances foreclosure of a real estate mortgage would not be for the best interest of the bank or the protection of its depositors. Once the bank acquires title it

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is responsible for the expense of upkeep or cost of insurance and the payment of taxes. These costs might continue for some time in view of the present demoralized condition of the real estate market.

"The mortgage loan, when made, was a legal investment and that because of its delinquency the problem now to be faced is not that of a new investment, but rather what should be done with the existing investment to best protect the bank and its depositors."

I am pleased to call your attention to Section 28 of Chapter 57 of our Revised Statutes which provides that,--

"Savings banks and institutions for savings may acquire and hold stocks, bonds, and other securities not authorized by law, hereafter acquired in settlements and reorganizations and accepted to reduce or avoid loss on defaulted loans and investments held by said banks and institutions, and may continue to hold such stocks, bonds, and other securities heretofore so acquired, and all other investments lawfully acquired, and shall not be obliged to sell or dispose of the same except at such times and in such manner as will prevent unnecessary loss or impairment of the business of the bank or institution."

I therefore advise you that any savings banks and institutions for savings may exchange any delinquent home mortgage loan owned or it on real estate acquired in connection with any such mortgage for the bonds of the Home Owners Loan Corporation, provided the board of directors, the trustees, as the case may be, of such savings bank or savings institution has carefully considered the situation and conditions surrounding the particular mortgage and the real estate involved, and is of the opinion that such an exchange will be to the advantage of the savings depositors to protect them from further loss.

Very truly yours,

Sanford L. Fogg
Deputy Attorney General

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