

Opinion No. 58-35

February 18, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: Honorable Georgia L. Lusk, Superintendent of Public Instruction, Santa Fe, New Mexico

QUESTION

QUESTIONS

1. Can permanent school funds be invested in F. H. A. mortgages?
2. Can permanent school funds be invested in G. I. mortgages?

CONCLUSIONS

1. Yes.
2. No.

OPINION

ANALYSIS

The answer to both questions calls for the proper construction of § 11-2-10, N.M.S.A., 1953 Compilation, which provides:

"The state treasurer is hereby authorized, with the approval of those officers and boards whose approval is required by law, to invest any part of the permanent school fund, or of any other fund derived from lands granted to the state of New Mexico, by any Act of Congress, in any bonds, notes or debentures of the United States of America, or in any bonds or obligations the payment of the principal and interest of which is unconditionally guaranteed by the United States of America. In making any such investment, the state treasurer is authorized to purchase any bonds, notes, obligations or debentures at their current market value, and any premium paid on any such purchases shall be refunded from the interest subsequently accruing on such bonds, notes, obligations or debentures during such period of time not exceeding three (3) years, as the state treasurer may determine."

As is seen, payment must be unconditionally guaranteed. This, to our way of thinking, is a most important factor.

Your first question was answered in the affirmative by Opinion of the Attorney General No. 5788, issued July 27, 1953. We agree with the conclusion therein reached. A copy of said opinion is attached for your convenience.

As will be observed from the said Opinion and quoted statute, mortgages or loans whose payment is not entirely guaranteed by the United States of America would not qualify. Yet our research discloses this infirmity in the case of G. I. mortgages. See for example Title 38, U.S.C.A., § 694 (a), pocket supplement, and Title 38, U.S.C.A., § 694A, pocket supplement, wherein are found restrictions and limitations relating to the percentage or aggregate amount of the loan guaranteed. Obviously, such limitations do not meet the statutory and constitutional requirements set out in Opinion No. 5788, and we must give a negative answer to your second question.