

**Opinion No. 60-204**

October 27, 1960

**BY:** OPINION of HILTON A. DICKSON, JR., Attorney General

**TO:** Mr. J. C. Hester State Investment Officer State Investment Council State Capitol  
Santa Fe, New Mexico

**QUESTION**

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Can the State Investment Council purchase municipal industrial revenue bonds with State permanent funds?

CONCLUSION

No.

**OPINION**

{\*616} **ANALYSIS**

Permissible investments of the State Investment Council are set forth in N.M.S.A., 1953 Compilation, Section 11-2-8.12 (P.S.). Subsections (B) and (E) are pertinent to your inquiry, and read as follows:

"B. Bonds, notes, or obligations of a municipal or political subdivision of this state, issued pursuant to a law of this state; Provided that the issuer has not, within ten (10) years prior to the making of the investment, been in default for more than three (3) months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes or obligations; and Provided further, if the bonds are city or county utility, or utility-district revenue bonds, the revenues of such utility, other than for payment of operation and maintenance expenses, are pledged wholly to the payment of the interest on and principal of such indebtedness, and the utility project has been completely self-supporting for a period of five (5) years next preceding the date of investment. . . ."

"E. Bonds, notes, debentures, car-trust certificates, preferred stock, or common stock of any corporation organized and operating within the United States. . . ."

While subsection (b), supra, gives the Council power to invest in municipal bonds, it will be readily seen that industrial revenue bonds are not, strictly speaking, municipal bonds of the type mentioned in the statute. Industrial revenue bonds do not, and cannot, pledge either the taxing power or the general credit of the municipality. They are not the

obligation of a municipality at all. Section 14-41-34, N.M.S.A., 1953 Compilation (P.S.), provides:

". . . Bonds and interest coupons issued under authority of this act shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation, and shall never constitute or give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. . . ."

And Section 14-41-35, N.M.S.A., 1953 Compilation (P.S.), provides:

". . . a municipality shall not have the power to obligate itself except with respect to the project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers. . . ."

In our opinion, the quoted portions of Section 11-2-8.12 (B) may not be interpreted to include municipal or political subdivision bonds that do not constitute some financial obligation of the municipality or political subdivision. This view is supported by the {617} remainder of Section 11-2-8.12 (B), which provides that the State Investment Council may only purchase municipal bonds where the issuer has not, within ten years prior to the making of the investment, been in default for more than three months in the payment of any part of the principal or interest on any debt evidenced by its bonds, notes, or obligations. This language clearly indicates a legislative intent to limit the State Investment Council's municipal obligation purchasing power to those cases where the municipality has no record of default for more than three months during the past ten years.

As shown above, industrial revenue bonds create no municipal liability, and no record of municipal payment or default can ever be shown. Industrial revenue bonds are not, therefore, the type of municipal obligation that the State Investment Council has power to purchase.

Nor can industrial revenue bonds be purchased as utility bonds under Section 11-2-8.12 (B), supra, for industrial revenue bonds cannot be issued for the purchase of any project in the nature of a public utility. See Section 14-41-31, N.M.S.A., 1953 Compilation (P.S.).

Turning to subsection (E) of Section 11-2-8.12, quoted above, we do not find purchasing authority of industrial revenue bonds. Such bonds are not issued by any corporation, and are not the obligation of any corporation. They are payable solely out of the revenues paid to the municipality under the lease, and the credit of the corporation is not pledged to their payment. The mere pledge of the revenues from the lease does not, in our opinion, convert industrial revenue bonds to corporate bonds of a type that the State Investment Council may purchase with state permanent funds.

We conclude that the State Investment Council has no power to purchase municipal industrial revenue bonds, for such bonds are neither the obligation of a municipality nor of a corporation.

By: Norman S. Thayer

Assistant Attorney General