Opinion No. 66-144

December 23, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. Leonard Valdes, Executive Secretary, Public Employees' Retirement Association, 113 Washington Avenue, Santa Fe, New Mexico

QUESTION

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Can the Public Employees' Retirement Association loan money to New Mexico savings and loan associations with such loans being secured by Federal Housing Administration insured mortgages in an amount equal to twice the amount of the loan?

CONCLUSION

No.

OPINION

*{*187}* ANALYSIS

The investments that can be made by the Public Employees' Retirement Board are set forth in Section 5-5-4.1, N.M.S.A., 1953 Compilation. The only provisions contained therein which are applicable to the present proposal are paragraphs numbered 1 and 4.

Section 5-5-4.1 authorizes the Retirement Board to invest and reinvest moneys in the fund in (1) "Bonds, notes or other obligations of the United States, **or those guaranteed by, or for which the credit of the United States is pledged** for the payment of the principal and interest or dividends thereof." (Emphasis added.)

Our information is that the United States Attorney General's Office has never ruled on whether Federal Housing Administration insured mortgages result in pledging the credit of the United States.

We are doubtful whether the credit of the United States is pledged. In *{*188}* all probability the insured mortgagee can look only to the funds of the Federal Housing Administration in the event of a default by the mortgagor. If this is the case, the investments proposed are not permissible under Section 5-5-4.1 (A) (1), supra.

Turning to paragraph 4 of Section 5-5-4.1, supra, we find that the Retirement Board is authorized to invest in "Bonds, debentures or other obligations issued by any national mortgage association under the Act of Congress of June 27, 1934, known as the 'National Housing Act', as amended."

However, this provision relates to direct transactions, with the Federal Housing Administration insuring all monetary advances. The proposal with which we are now concerned does not fit this category. The Retirement Board would simply be loaning money to a savings and loan association with the loan secured by individual Federal Housing Administration insured mortgages in an amount equal to twice the loan. The Retirement Board would be looking to the savings and loan association as the primary obligor.

In the absence of legislation, the proposed loan is not an investment which the Retirement Board is authorized to make.