

Opinion No. 70-98

December 15, 1970

BY: OPINION OF JAMES A. MALONEY, Attorney General

TO: Mr. Edward P. Moya Chief Local Government Division Department of Finance & Administration State Capitol Santa Fe, New Mexico 87501

QUESTIONS

QUESTION

May a county temporarily invest its public money in securities issued by the following agencies: Federal National Mortgage Association; Federal Intermediate Credit Bank; Federal Home Loan Bank; Federal Land Bank; Banks for Cooperatives; Tennessee Valley Authority; Inter-America Development Bank?

CONCLUSION

See Analysis.

OPINION

{*172} ANALYSIS

Public monies may be invested in interest-bearing securities. N.M. Const. art. 8, § 4. Such investment of public funds, however, is limited to those interest-bearing securities as may be provided by statute. Opinion of the Attorney General No. 68-6, issued January 10, 1968.

Initially, the legislature restricted counties to temporarily investing excess funds in only United States bonds or treasury certificates. N.M. Laws 1923, ch. 76, § 26, as amended N.M. Laws 1925, ch. 123, § 10; Section 11-2-41, N.M.S.A., 1953 Comp. The legislature then provided, however, that a county would have the power to invest all monies not immediately necessary for the public uses of the county in bonds or negotiable securities of the United States as well as of other governmental units. N.M. Laws 1933, ch. 175, § 4, as amended N.M. Laws 1968, ch. 18, § {*173} 3; Section 11-2-7, N.M.S.A., 1953 Comp. (1969 Supp.). From these laws it is apparent that the legislature no longer restricts short-term investment of county funds to United States bonds or treasury certificates, but now permits such investment in the broader category of bonds or negotiable securities of the United States. Therefore, the inquiry becomes one of whether the securities issued by the above agencies are securities of the United States. As will be indicated below, the answer to this inquiry will depend upon the particular types of securities.

Congress created the Federal National Mortgage Association as a division of the Department of Housing and Urban Development. 12 U.S.C. § 1717, **et seq.** Securities in the form of participation certificates issued and guaranteed by the association under 12 U.S.C. § 1717(C) are considered to be general obligations of the United States. 42 Op. Att'y Gen. (September 30, 1966). General obligations and securities issued by the association, however, are not guaranteed by the United States and do not constitute a debt or obligation of the United States. 12 U.S.C. §§ 1719(B), 1719(E), 1721(B).

The Federal Intermediate Credit Bank was created pursuant to 12 U.S.C. § 1021. The bank is authorized to issue debentures and obligations pursuant to 12 U.S.C. § 1041; however, the United States expressly assumes no obligation or liability, either direct or indirect. 12 U.S.C. § 1043.

The Federal Home Loan Bank is authorized to issue securities, 12 U.S.C. § 1431(A), and bonds, 12 U.S.C. § 1431(C). Congress has declared, however, that these securities are not obligations of the United States and are not guaranteed by the United States. 12 U.S.C. § 1435.

The Federal Land Bank was created by the Farm Credit Administration, pursuant to 12 U.S.C. § 672, as an independent agency of the executive branch of the federal government. 12 U.S.C. § 636(b). It is the frequently-repeated position of the Attorney General of the United States that securities issued and guaranteed by federal agencies, such as those bonds issued by the Federal Land Bank, are obligations of the United States and backed by the full faith and credit of the United States. 42 Op. Att'y Gen. (April 14, 1961). It has been the position of this office that, generally, a guarantee of a federal agency constitutes a pledge of the credit of the United States and therefore amounts to an obligation of the United States. Opinion of the Attorney General, No. 69-115, issued September 30, 1969.

Banks for Cooperatives are created by the Governor of the Farm Credit Administration, pursuant to 12 U.S.C. § 1134. The Central Bank for Cooperatives may issue debentures, 12 U.S.C. § 1134(M), so long as they are secured by direct obligations of the United States. Such securities are to be considered as joint and several obligations of the Central Bank for Cooperatives and of the Regional Banks for Cooperatives. 12 U.S.C. § 1134(M). Therefore, such securities would not be direct obligations of the United States.

Congress created the Tennessee Valley Authority pursuant to 16 U.S.C. § 831. The Authority is authorized to issue bonds for future construction. 16 U.S.C. § 831N. Bonds for the operation of existing facilities may be issued and are fully and unconditionally guaranteed by the United States. 16 U.S.C. § 831N-1. Bonds for the purchase, rehabilitation and construction of electric utility properties are also authorized and fully and unconditionally guaranteed by the United States. 16 U.S.C. § 831N-3. Bonds for the financing of its power program and for refunding other types of bonds, however, are declared not to be obligations of the United States. 16 U.S.C. § 831N-4(B).

The Inter-America Development Bank was established by an agreement of the Organization of American States and Congress authorized membership by the United States in the bank. 22 U.S.C. § 283. This congressional act was to provide for the participation of the United States in the Inter-America Development Bank, but it in no sense raised the bank to the same level of the United States insofar as securities issued by the bank might be concerned. Therefore, securities issued by the bank are not securities of the United States {^{*174}} and not proper subjects for investment by counties.

In summary, those securities outlined above which are guaranteed by the United States are proper investments under the above legislation.

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