

Opinion No. 33-674

October 30, 1933

BY: E. K. NEUMANN, Attorney General

TO: Honorable John Bingham, State Bank Examiner, Santa Fe, New Mexico.

{*88} This has reference to a question upon which you have asked this office for an opinion which is mentioned in a letter addressed to you under date of October 18, 1933, from Mr. John K. Stauffer, Secretary of the Mutual Building and Loan Association of Santa Fe, New Mexico.

The question is whether or not a building and loan association can accept Home Owners Loan bonds in payment of mortgages. Section 5 of Chapter 78, Laws of 1933 provides that every such corporation shall lend its funds on real estate or shares of its own stock and **upon terms and conditions**, and in the manner, which may be specified **by its by-laws**. "Building and Loan Associations" in general may settle and adjust claims against borrowers. 9 C J 978, Kelso vs. Oak Park Bldg., etc. 99 Ill. A. 123; Baum vs. Nord 88 Ind. . 674, 164 N E 294. It is therefore my opinion that a Building and Loan Association may accept such bonds in payment of mortgages, if in the exercise of reasonable business judgment its officers consider it advisable, and providing that such a transaction is not inconsistent with the by-laws of the association.

Section 6 of Chapter 147, Laws of 1931 provides that:

"No loans shall be made by such corporation except to its own members; provided, if at any time there is no demand by any of the share holders for the loan of the surplus funds of the corporation, then such funds may be loaned, upon real estate security, as herein provided, to non-members, or invested in the following securities, to-wit: Securities of the United States; of the several States of the United States; Counties, Cities, Towns and School Districts."

This provision of the law does not in my opinion prohibit the acceptance of Home Owners Loan bonds as aforesaid for the reason that such a transaction is not a loan nor is it an investment of surplus funds within the meaning of said section. It can hardly be said that upon foreclosure and the entering of a deficiency judgment an association would not have the right to obtain through purchase at a sheriff's sale such personal property of the debtor as might have been levied upon, nor that such a transaction should be considered as an investment of "surplus funds" within the meaning of Section 6 above referred to. It would seem equally apparent to me that where in the judgment of the officers of the association, acting within their powers as stated in the by-laws, it is good business to accept Home Owners Loan bonds in full payment of mortgages they should be permitted to do so, since the association might be compelled to accept similar securities after foreclosure in the manner above stated.

Trusting that this gives you the information desired, I am

By: QUINCY D. ADAMS,

Asst. Attorney General