

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 85-11-279 August 18, 1986

SUBJECT: Taxation and Revenue - Investment of Public Funds.

SYLLABI:

1. County funds may be invested in a certificate of deposit that is collaterally secured by the bonds or debentures of a federal home loan bank.
2. The County Treasurer is not the proper party to hold securities used to secure a certificate of deposit purchased with county funds as authorized by § 6-5-10(a)(4).

TO: Honorable Pickens Williams, Jr.
Barnwell County Treasurer

FROM: Ronald W. Urban *RWU*
Assistant Attorney General

QUESTIONS:

1. May county funds be invested in a certificate of deposit that is collaterally secured by the bonds or debentures of a federal home loan bank?

2. Is the County Treasurer the proper party to hold securities used to secure a certificate of deposit purchased with county funds?

APPLICABLE LAW: 12 U.S.C.A. 1435; §§ 6-5-10 and 11-1-60, Code of Laws of South Carolina, 1976.

DISCUSSION - Question 1:

The question posed is whether county funds can be invested in a certificate of deposit when the uninsured portion of such certificate is secured by a pledge from a federal home loan bank. It is assumed that this pledge consists of obligations in the form of either bonds or debentures and that the value of the pledge is not less than the amount of the certificate of deposit including interest.

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Section 6-5-10(a) authorizes the investment of county funds in certificates of deposit under certain conditions. The relevant portion of that statute provides in part that excess county funds may be invested in:

" (1) Obligations of the United States and agencies thereof;

(2) General obligations of the State of South Carolina or any of its political units;

* * *

(4) Certificates of deposit where the certificates are collaterally secured by securities of the type described in (1) and (2) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest; provided, however, such collateral shall not be required to the extent that same are insured by an agency of the federal government. * * *."

Although 12 U.S.C.A. 1435 specifically states that the obligations of a federal home loan bank shall not be considered obligations of the United States, such are nonetheless obligations of an "agency thereof".¹ Accordingly, the proposed investment is within the terms of § 6-5-10 since it is collaterally secured by obligations of a United States agency.

Additional support for this conclusion can be found in § 11-1-60. That section allows for the further investment of public funds as follows:

"The State or any department, institution, agency, district, county municipality or other political subdivision of the State or any political or public corporation of the

¹ See Fahey v. O'Melveny & Myers, 200 F.2d 420, 446, wherein it is held that the federal home loan bank system is a federal agency.

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State or of the United States may invest its funds or the moneys in its custody or possession eligible for investment in the shares of any Federal savings and loan association or in the shares of any building and loan association organized and existing under the laws of this State when such shares are insured by the Federal Savings and Loan Insurance Corporation and also in bonds or debentures issued by any Federal home loan bank or in the consolidated bonds or debentures issued by the Federal Home Loan Bank Board."

Inasmuch as § 11-1-60 permits county funds to be invested in the bonds or debentures of any federal home loan bank, it stands to reason that such funds can be invested in a certificate of deposit secured by the same.

CONCLUSION - Question 1:

County funds may be invested in a certificate of deposit that is collaterally secured by the bonds or debentures of a federal home loan bank.

DISCUSSION - Question 2:

Section 6-5-10 requires that all securities used to secure certificates of deposit be "held by a third party as escrow agent or custodian". This implies that the holder of the securities must not be a party to the transaction. A. T. Knopf, Inc. v. Richardson, Mo. App., 674 S.W.2d 174, 176 (1984). Obviously, this would preclude the County Treasurer since the Treasurer is making the investment here in question.

CONCLUSION - Question 2:

The County Treasurer is not the proper party to hold securities used to secure a certificate of deposit purchased with county funds as authorized by § 6-5-10(a)(4).

RWU:wcg