



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

HERALD C. MANN  
ATTORNEY GENERAL

Honorable Lee Brady, Commissioner,  
Department of Banking  
Austin, Texas

Dear Mr. Brady:

Opinion No. 0-2592

Re: Whether or not a savings department may legally invest in a first-mortgage note, the maturity of which is more than ten years from the date of execution, but which note will mature within ten years from the date of purchase?

By your letter of November 8, 1940, you make the following request for an opinion of this department, to-wit:

"Your attention is directed to the provisions of Article 416 of the Revised Statutes, covering the character of investments to be made by banks under their savings departments.

"Section 5 of that Article provides that a bank may invest in first mortgage notes secured by real estate 'to run for a term not longer than ten years....'

"Section 6 provides for the purchase of bankers acceptances 'having a maturity of not longer than six months from the date of the purchase thereof.'

"In the light of the above, I respectfully submit:

"May a savings department legally invest in a first mortgage note, the maturity of which is more than ten years from the date of execution, but which note will mature within ten years of the date of purchase?"

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You are respectfully advised that it is the opinion of this department your question should be answered in the affirmative.

Subdivision 5, of Article 416, Revised Civil Statutes, insofar as pertinent, provides:

"In bonds or notes secured by first mortgage, first deed of trust, or other first lien on improved real estate in Texas \* \* \* such bonds or notes to run for a term of not longer than ten (10) years, and to be always accompanied by a complete abstract of title to the property mortgaged, and an attorney's certificate approving the title or a title insurance policy in some company incorporated under the laws of Texas guaranteeing the title and guaranteeing that said bonds or notes retain a first lien on the land mortgaged."

The obvious purpose of the statute in thus safeguarding the funds of our savings departments, was to see that such loans or investments were not made for an unreasonable time, and the Legislature has named ten years for such reasonable time. The ten years named mark the time for which the bank may put out its money. The statute is prospective and not retrospective. It is not concerned with the past running of the note, but is concerned only with the future time for which it will run. The idiom of our language is such that the infinitive "to run" connotes the future and not the past. So that, the period said bonds or notes may run dates from the time of the acquisition thereof by the bank, and not from the date of the execution of the instrument.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Ocie Speer*  
Ocie Speer  
Assistant

OS-MR

APPROVED - NOV 16, 1940

*Charles Mann*  
ATTORNEY GENERAL OF TEXAS

