



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN

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ATTORNEY GENERAL

Honorable Jesse James
State Treasurer
Austin, Texas

Dear Mr. James:

Opinion No. 0-4178

Re: Whether or not Insured Building and Loan Association stock certificates are eligible under the State Depository Law as collateral to secure State funds?

We beg to acknowledge receipt of your letter asking for an opinion from this department, as follows:

"The State Depository Board is requesting an opinion from you at your very earliest convenience in regard to Insured Building and Loan Association Stock Certificates, as follows:

"1. Are such Certificates eligible under the State Depository Law as collateral to secure State Funds?

"2. If in your opinion they are eligible as collateral for State Funds, how or by whom is the collateral value of such Certificates to be determined?"

Article 2529 of Vernon's Civil Statutes prescribes the kinds of securities which are eligible as collateral to a depository for State funds, as follows:

"Bonds and certificates and other evidences of indebtedness of the United States, and all other bonds which are guaranteed as to both principal and interest by the United States; bonds of this State; bonds and other obligations issued by the University of Texas; warrants drawn on the State Treasury against the General Revenue of the State; bonds issued by the Federal Farm Mortgage Corporation, provided both principal and interest of said bonds are guaranteed by the United States Government; Home Owners Loan Corporation

bonds, provided both principal and interest of said bonds are guaranteed by the United States Government and such securities shall be accepted by the Board in an amount not less than five (5%) per cent greater than the amount of State funds which they secure; provided, that Texas Relief Bonds may be accepted at face value and without margin for the amount of State funds allotted, provided such State Relief Bonds have all unmatured coupons attached; bonds of counties located in Texas; * * *

Insured Building and Loan Association shares or stock are not included in the list of eligible securities for State deposits, and the Board, therefore, has no authority to accept them as such.

It is well, perhaps, for us to refer to Senate Bill No. 166, passed by the Regular Session of the 47th Legislature dealing with Investment by Fiduciaries.

Section 1, of Senate Bill No. 166, contains the following:

" * * *, hereafter, all mortgages, bonds, debentures, notes, collateral trust certificates, and other such evidences of indebtedness, issued or that hereafter may be issued under the terms and provisions of the National Housing Act, approved by the President of the United States on June 27, 1934, as amended and as may hereafter be amended, and all 'insured accounts' issued or that may hereafter be issued by any institution insured under the provisions of Title IV of the National Housing Act, approved June 27, 1934, as amended and as may hereafter be amended, or any evidences of indebtedness or accounts that may be issued or insured by any lawful agency created thereunder, all mortgages, bonds, debentures, notes, collateral trust certificates, or other such evidences of indebtedness, which have been or which may hereafter be issued by the Federal Home Loan Bank Board, or any Federal Home Loan Bank, or the Home Owners' Loan Corporation, or by the Federal Savings and Loan Insurance Corporation, or by the Reconstruction Finance Corporation, or by the Federal Farm Loan Board, or by any Federal Land Bank, or by any National Mortgage Association, or by any entity, corporation or agency, which has been or which may be created by or authorized by

any Act, which has been enacted or which may hereafter be enacted by the Congress of the United States, or by any amendments thereto, which has for its purpose the relief of , refinancing of or assistance to owners of mortgaged or encumbered homes, farms, and other real estate, and the improvement or financing or the making of loans on any real property, shall hereafter be lawful investments for all fiduciary and trust funds in this State, and may be accepted as security for all public deposits where deposits of bonds or mortgages are authorized by law to be accepted. ***"

Assuming, but not deciding, that the last provision of the above quotation with respect to securities there mentioned being eligible "as security for all public deposits where deposits of bonds or mortgages are authorized by law to be accepted", is applicable to the class of deposits involved in your letter of inquiry, nevertheless S.B. No. 166 in this respect is a general law of deposit securities, whereas the State Depository Act herein first above quoted is a special law upon the subject of securities eligible for deposit by State depository banks, and under well-established principles, numerously attested by the decisions, the special law prevails over the general. It is treated as an exception to the general law, thus enabling both the general and the special laws to stand at the same time and to be applicable in their appropriate spheres.

San Antonio & A. P. Ry. Co. v. State, 95
S. W. (2) 680;

Townsend v. Terrell (Tex.) 16 S.W. (2)
1063;

Cole v. State (Tex.) 170 S. W. 1036, 163
S. W. 353;

Hunt v. Atkinson (Com. Apps.) 12 S.W. (2)
142, 17 S. W. (2) 780, 18 S.W. (2) 594;

39 Tex. Jur. "Statutes", § § 81,82.

Honorable Jesse James, page 4

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Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Ocie Speer
Ocie Speer
Assistant

OS:MR:wc

APPROVED NOV 8, 1941
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman