



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

January 29, 1957

Honorable Jesse James
State Treasurer
Capitol Station
Austin, Texas

Opinion No. WW-11

Re: Whether the Housing
Authority Bonds held
by the First National
Bank of Memphis, Texas,
are eligible as collat-
eral for State Funds.

Dear Mr. James:

Your recent letter presents the question of whether bonds issued by a Public Housing Authority may be used as collateral to secure the deposit of State funds.

Article 2529, V.C.S., is the statute which permits a depository of State funds to post a surety bond or pledge certain types of securities as collateral for State deposits. None of the enumerated types of securities will cover the obligations issued or to be issued by a Public Housing Authority unless the language "all other bonds which are guaranteed as to both principal and interest by the United States" is applicable.

The Housing Authority bonds tendered were issued pursuant to the provisions of Chapter 8, of Title 42, U. S. C. A. Under Sections 1410 and 1421(a) of that chapter, the United States may obligate itself to guarantee that annual contributions will be made to supplement local funds in an amount not to exceed the principal and interest to become due. The contract between the Federal Government and the Public Housing Authority may provide that the interest and sinking fund will be used for the purpose of paying the obligation, but this payment of the obligation is not guaranteed by the United States Government. Accordingly, the bonds are not eligible as collateral for State deposits under the provisions of Article 2529, V.C.S., since the quoted language, when taken with the other language of the Act, evidences a clear intent that the payment of the principal and interest must be the obligation guaranteed by the Federal Government.

The State Depository Law, insofar as the enumerated eligible securities are concerned, is the general law, and where a

special act states that an additional security may be used as collateral, that special act will be treated as an exception to the normal rule in order that both enactments may apply to their appropriate spheres. Simpson v. Booth, 163 S.W. 2d 1080 (Tex.Civ.App., 1942) error ref.; 39 Tex. Jur., "Statutes" Secs. 81,82. In 1939, the Legislature of Texas, 46th Legislature, page 427 (codified by Vernon as Article 1269k-1) passed such a special statute, which reads, in part:

"Notwithstanding any restrictions on investments contained in any laws of this state, the state and all public officers . . . may legally invest any sinking funds . . . in any bond . . . issued by a housing authority pursuant to the Housing Authority Law (Article 1269k, V.C.S.) . . . or issued by any other public housing authority or agency in the United States, when such bonds . . . are secured by a pledge of annual contributions to be paid by the United States Government or any agency thereof, and such bonds . . . shall be authorized security for all public deposits . . ." (Emphasis supplied)

The caption of the act reads, in part, as follows:

"An act to provide that bonds and other obligations issued by any public housing authority or agency in the United States, when secured by a pledge of annual contributions to be paid by the United States Government, shall be security for all public deposits and legal investments for the state and public officers . . ." (Emphasis supplied).

The effect of the 1939 statute is to add, by special enactment, an additional type of eligible security as collateral for state deposits. In no other manner are the provisions of Article 2529, V.C.S. affected. Upon the basis of the information which has been furnished to this office, we are unable to determine whether availability of the entire principal and interest requirements of these particular bonds is the subject of the guarantee by the Federal Government as permitted, but not required, by the provisions of Chapter 8 of Title 42, U. S. C. A.

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Accordingly, you and the State Depository Board are respectfully advised that the obligations may be accepted as collateral for state deposits only if the Federal Government guarantees that annual contributions will be made, sufficient to supplement local funds, so as to meet the principal and interest requirements of the particular bonds tendered as the same shall become due. Each bond transcript will have to be examined individually to determine if this requirement has been met.

SUMMARY

Public Housing Authority bonds, issued pursuant to Chapter 8 of Title 42, U.S.C.A., may be used as collateral for state deposits under Article 1269k-1, V.C.S., only if the particular bonds are secured by a pledge of annual contributions by the Federal Government or agency thereof. We have not been supplied with the transcript authorizing the issuance of these bonds and, therefore, can not pass upon your direct question. The provisions of Article 2529, as modified by Article 1269k-1, V.C.S., prescribing the limitations and conditions upon the deposit of collateral securities are applicable to such bonds.

Very truly yours,

WILL WILSON
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APPROVED:

OPINION COMMITTEE
H. Grady Chandler, Chairman