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#94100

NO.
STATE OF NEBRASKA
OFFICIAL
DEC 19 1994
DEPT. OF JUSTICE

DATE: December 15, 1994

SUBJECT: Application of *Neb. Rev. Stat.* § 77-2306 (1990); Permissible Securities for Depository Banks.

REQUESTED BY: Dawn E. Rockey
Nebraska State Treasurer

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

Under the provisions of *Neb. Rev. Stat.* § 77-2306 (1990), any bank which has applied to act as a depository bank for Nebraska state funds may, in lieu of a bond, deposit certain enumerated securities with the State Treasurer as security for the state monies deposited in that bank. The types of securities listed in Section 77-2306 include:

> (a) United State Government notes, certificates of indebtedness, or treasury bills of any issue; (b) obligations fully and unconditionally guaranteed both as to principal and interest by the United States or bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration; (c) bonds of any county, city, village, or school district of this state which have been issued and registered as required by law; (d) bonds of the State of Nebraska or of any state the bonds of which are purchased by the Board of Educational Lands and funds of this state for investment of the permanent school funds

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> or warrants of the State of Nebraska; (e) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture; or (f) registered warrants of any county, city or school district of this state.

Various depository banks have deposited securities with your office in the manner provided by Section 77-2306.

The office of the State Auditor of Public Accounts has apparently been in the process of conducting audit work for 1994 on pledged collateral for state demand deposit accounts, and you have received a letter from that office which questions the use of certain mortgage-backed securities to meet the requirements of Section 77-2306. Specifically, the State Auditor questions whether mortgage-backed securities of the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA) or the Federal Home Loan Bank are acceptable as deposit securities under that statute. In addition, the Auditor states that a Norris Public Power District Electrical System Bond and a Lincoln-Lancaster Public Building Commission obligation do not appear to be acceptable collateral for depository banks. In light of the Auditor's correspondence, you have requested our opinion as to whether the various securities questioned by the Auditor are permissible securities under Section 77-2306.

We have considered the requirements of Section 77-2306 previously. In 1967-68 Rep. Att'y Gen. 268 (Opinion No. 173, October 25, 1968), we stated that bonds which were obligations of local housing authorities were not proper securities for deposit with the State Treasurer under Section 77-2306, since those categories of securities were not listed in the statute. In our opinion, we noted that it is a well established rule of statutory construction that the express mention of one thing in a statute implies the exclusion of all others. As a result, since Section 77-2306 listed specific securities as acceptable for use as pledged collateral for the State, all other forms of securities must be assumed to have been excluded by the Legislature. On that basis, we concluded that items not specifically included in the categories of securities enumerated in Section 77-2306 could not be used as collateral by a depository bank. We believe that our reasoning in 1968 applies equally to the present situation. Securities which are not included in any of the categories listed in Section 77-2306 cannot be used as pledged collateral under that statute.

Upon review of Section 77-2306, it appears to us that mortgage-backed securities of the various federal entities listed in your opinion request letter could only be covered by that portion of Section 77-2306 (b) which allows the deposit of

"obligations fully and unconditionally guaranteed both as to principal and interest by the United States." If those mortgage-backed securities are obligations guaranteed on that basis, then they are acceptable under Section 77-2306. If they are not, then they may not be used as pledged collateral by depository banks.

Our research indicates that FHLMC and FNMA issue and market a number of various kinds of securities, some of which are guaranteed as to principal and interest by the United States, and some of which are not. We discussed some of the securities issued by FNMA and whether or not they are fully guaranteed in 1971-72 Rep. Att'y Gen. 121 (Opinion No. 54, May 12, 1971), and we have enclosed a copy of that opinion for your information. In that opinion, which our research indicates is still timely, we pointed out that unsecured obligations of FNMA, such as various debentures, are specifically not guaranteed by the United States pursuant to 12 U.S.C. § 1719 (b). With respect to mortgage-backed securities, straight pass-through securities are not fully guaranteed by the United States, while modified pass-through securities are, for the reasons stated in the opinion. The same conclusions apply to the various securities issued by FHLMC.

Your opinion request letter and the materials from the Auditor simply describe the securities at issue in this instance as "mortgage-backed securities" with no detail as to what types of securities are involved. Absent such detail, we can only state that the securities from FHLMC and FNMA in question are acceptable under Section 77-2306 if they are fully guaranteed by the United States as to principal and interest. If they are not fully guaranteed in that manner, then they may not be used as pledged collateral by depository banks. You should examine those securities and inquire of the banks which presented them to determine the nature of the federal guarantee. Alternatively, we can give you our views on specific securities if you provide us with more information.

The Federal Home Loan Bank also issues a number of various types of debentures and bonds. 12 U.S.C. § 1431. However, under 12 U.S.C. § 1435, those obligations are specifically not obligations of the United States, and are not guaranteed by the United States. As a result, we do not believe that those securities fall under any of the categories listed in Section 77-2306, and they cannot be used as collateral under that statute. Again, however, you have not provided us with any detail as to the types of securities at issue from the Federal Home Loan Bank, and you may wish to inquire of the bank(s) which presented those securities as to the nature of the federal guarantee. If those securities are fully guaranteed as to principal and interest by the United States, then they would be acceptable under Section 77-2306 (b).

Finally, you have inquired as to whether securities issued by two local governmental entities may be used to meet the requirements of Section 77-2306. We do not believe that bonds of the Norris Public Power District Electrical System are covered by any of the provisions of Section 77-2306, and they are not acceptable as pledged collateral under that statute. We are not entirely sure, from your letter, as to the nature of the obligation of the Lincoln-Lancaster Public Building Commission. However, unless that security is a bond of the city of Lincoln or of Lancaster County which is registered as required by law so as to fall under Section 77-2306 (c), we do not believe that it is acceptable as security for a depository bank.

Sincerely yours,

DON STENBERG
Attorney General

Dale A. Comer

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Assistant Attorney General

Approved by:

DON STENBERG, Attorney General

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