

OPINION NO. 66-038**Syllabus:**

1. A licensee under the Second Mortgage Loan Law may take either a mortgage other than a first lien on real estate of the borrower or a security interest in personal property of the borrower.

2. It is my opinion that Section 1321.52, Revised Code, does not require a real estate mortgage to be a part of all transactions included within the provisions of the Second Mortgage Loan Law.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William B. Saxbe, Attorney General, February 23, 1966

I have your request for my opinion which reads as follows:

"The Department of Commerce requests an interpretation of language in Section 1321.52, Ohio Revised Code, which is a part of the 'Second Mortgage Loan' law enacted by the 106th General Assembly, and which became effective November 1, 1965.

"The section in question sets forth in part:

"No person who, on behalf of himself or any other person, advertises, solicits, or holds himself out as willing to take as security for a loan a mortgage on a borrower's real estate which is other than a first lien on such real estate shall engage in the business of lending his own or another's money, credit, or choses in action to any borrower and take in his own or any other person's name as security for the loan a mortgage on the borrower's real estate which is other than a first lien on such real estate or a security interest in any personal property of the borrower, without first having obtained a certificate of registration from the division of Securities.* * * (Underscoring ours)

"An interpretation of the underscored portion of the above statutory language is requested. Specifically, we desire your opinion as to whether this language permits a licensee under the act to take a security interest in personal property of a borrower without also taking a mortgage 'other than a first lien' on real estate of the borrower, or if the statute requires a real estate mortgage to be a part of any transaction under this section."

The provisions of Section 1321.52, Revised Code, referred to in your letter of request, prohibit the class of persons described in the statute from taking as security for a loan a mortgage on real estate other than the first lien on such real estate or a security interest in personal property of the borrower without obtaining a certificate of registration from the division of securities. The class of lenders subject to such prohibitions are those persons who, on behalf of themselves or any other person advertise, solicit or hold themselves out as willing to take as security for a loan, a mortgage on the borrower's real estate which is other than first lien on such real estate. It follows that when a person obtains a certificate of registration from the Division of Securities he is permitted to take as security for a loan a mortgage on real estate other than a first lien or a security interest in personal property of the borrower. I find no requirement in that section that a licensee take both a security interest in personal property of the borrower and a mortgage other than

a first lien on real estate of the borrower. The two activities prohibited without a certificate of registration (taking a mortgage other than a first lien on real property of the borrower and taking a security interest in personal property of the borrower) are prohibited individually and separately. The prohibition is in the disjunctive. The prohibition is not limited to a transaction in which both activities are present. I must conclude that these same activities which are permitted when one obtains a certificate of registration from the Division of Securities are permitted individually and separately and that there is no requirement that they are permitted only when they are both present in one transaction.

In consideration of your request I recognize that the title to the Second Mortgage Loan Act provided:

"To amend * * * and to enact sections * * * of the Revised Code relative to regulating companies taking second mortgages as security for loans."

Examination of the title would seem to indicate that it was the intent of the legislature to regulate companies making loans secured by second mortgages. However, examination of Section 1321.52, Revised Code, indicates that the language used prohibits the taking of either a second mortgage or security interest in personal property by the limited class of lenders previously described herein. The General Assembly used the words "or a security interest in any personal property of the borrower" and I am required to construe this statute so that no word, clause or part shall be rendered surplusage.

I must, therefore, conclude that the phrase "or a security interest in any personal property of the borrower" describes an activity prohibited to those persons otherwise subject to the Act in the absence of the registration provided for in Section 1321.52, Revised Code.

Accordingly, in answer to your specific question, it is my opinion that a licensee under the Second Mortgage Loan Law may take either a mortgage other than a first lien on real estate of the borrower or a security interest in personal property of the borrower, recognizing, as I must, that such licensee must comply with all other provisions of law. Further, it is my opinion that Section 1321.52, Revised Code, does not require a real estate mortgage to be a part of all transactions included within the provisions of the Second Mortgage Loan Law.