

2488.

HOUSING AUTHORITY—STATE PUBLIC BODIES—SECTION 1078-61 G. C. DOES NOT MODIFY OR BROADEN PROVISIONS OF BANKING ACT AND BUILDING AND LOAN ACT—TITLE GUARANTEE AND TRUST COMPANIES—DEPOSITORY — CERTAIN DEPOSITORIES PROHIBITED FROM INVESTING IN BONDS OR OTHER OBLIGATIONS OF LOCAL HOUSING AUTHORITY—TYPE OF TRUST FUNDS THAT MAY BE INVESTED.

SYLLABUS:

1. *Section 1078-61, General Code, does not modify or broaden the investment provisions of the Banking Act and the Building and Loan Acts to permit investments in bonds or other obligations of a local housing authority. Title Guaranty and Trust Companies having to comply with the laws pertaining to savings banks or commercial banks to become eligible as a state depository, are likewise prohibited from investing in bonds or other obligations of a local housing authority.*

2. *Trust funds under the jurisdiction and control of a state bank may be invested in bonds or other obligations of a housing authority.*

COLUMBUS, OHIO, May 18, 1938.

HON. ALFRED A. BENESCH, *Director of Commerce, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent letter requesting my opinion, as follows:

“House Bill 788, recently enacted by the General Assembly of Ohio and signed by the Governor, has relation to the powers of housing authorities, state public bodies, and methods of financing same in order to provide housing relief for the low income group.

Section 1078-61 of the measure referred to provides as follows:

‘All funds, public or private, trust or otherwise, may be invested in any bonds or other obligations of a housing authority, and such bonds or other obligations may be accepted as satisfactory security for all public deposits, anything in any other law to the contrary notwithstanding; it being the purpose of this section to authorize the investment in bonds or other obligations of a housing authority of all sinking, insurance, retire-

ment, compensation, pension and trust funds, whether owned or controlled by private or public persons or officers.'

You will note that this section authorizes the investment of all funds, public or private, trust or otherwise, in any bonds or other obligations of a housing authority, and provides further that such bonds or other obligations may be accepted as satisfactory security for all public deposits, *anything in any other law to the contrary notwithstanding*. Moreover, there is a specific declaration to the effect that the purpose of this section is 'to authorize the investment in bonds or other obligations of a housing authority of all sinking, insurance, retirement, compensation, pension and trust funds, whether owned or controlled by private or public persons or officers.'

Two questions have arisen in connection with the construction and interpretation of this measure: first, whether the phrase 'anything in any other law to the contrary notwithstanding' has reference only to the acceptance of such bonds or other obligations as satisfactory security for other public deposits, or whether it has reference as well to the investment of all funds, public or private, trust or otherwise, in any bonds or other obligations of a housing authority; and second, whether the effect of Section 1078-61 hereinabove quoted is to enlarge and broaden the investment provisions of the Banking Act and of the Building and Loan Act.

Section 710-111 of the General Code sets forth the character of investments which a bank is authorized to make, and includes bonds or other obligations of the United States, bonds or other obligations of any foreign government, which has not defaulted for a period of twenty-years, bonds or other obligations of any state or territory of the United States, bonds or other obligations of any county, town, township, city, school district, improvement district or sewer district, or other organized or political subdivision in this state (I am assuming that a housing authority cannot be construed as a political subdivision), bankers' acceptances, corporate bonds, notes, bonds, debentures and other such obligations issued by the Federal Housing Administration, and bonds or notes secured by mortgages insured by the Federal Housing Administrator, and shares issued by a Federal Savings and Loan Association.

Section 9660 of the General Code sets forth the investments which building and loan associations are authorized to make and sanctions such investments without limitation in bonds of the United States, of the District of Columbia, of the

State of Ohio, or of any county, township, school district, incorporated city, village or other political division in the State of Ohio, in farm loan bonds, in notes, debentures and bonds of the Federal Home Loan Bank, in bonds or other securities issued under the provisions of the Act of Congress known as the Home Owners' Loan Act of 1933 and any such other securities as now are or hereafter may be accepted by the United States to secure government deposits in national banks.

In an opinion rendered by the Attorney General in 1927 (Number 145), it is ruled that a building and loan association is not legally authorized to invest any of its surplus funds in any securities other than those mentioned in the foregoing sections and two succeeding sections, the latter two having no bearing on the matter now at issue.

Proceeding upon the general theory that the provisions of any special statute supersede the provisions of the general statute, am I correct in assuming that the provisions of House Bill 788 do not authorize a bank to make investments in securities other than those mentioned in General Code Section 710-111, nor do they authorize building and loan associations to make investments in securities other than those mentioned in General Code Section 9660?

Furthermore, am I correct in assuming that a bank may invest *trust funds* under its jurisdiction and control in bonds or other obligations of a housing authority, since trust funds cannot, of course, be construed as investments of the bank?"

It is not necessary to again quote Section 1078-61, General Code, but it should be borne in mind that the whole section is in one sentence and that there is a semi-colon after the word "notwithstanding," which serves to break this sentence into two parts.

The questions as stated in paragraph five of your letter are succinctly stated. The answering of your second question in the negative will obviate the answering of your first, because in such case bonds of a housing authority created under the present Ohio statutes will not be among the assets of a company governed by the banking or building and loan acts for offering as security for public deposits.

It is necessary to first ascertain the intention of the legislature in this enactment. It is elementary, of course, that the intention of the legislature can only be gathered from the language used in the statute and words may not be added or phraseology changed to alter the express language as used. (See *Slingluff vs. Weaver*, 66 O. S., 621.)

From a reading of this section it is noted that it contains a broad and

all-inclusive statement in general language as to funds which may be invested in bonds or other obligations of a housing authority; it then goes on to state expressly the purpose of the section and particularizes as to the various types of funds, naming them, which may be invested in bonds of a housing authority. The language used by the legislature is clear and free from ambiguity. The first broad and all-inclusive general language is limited by the particular language in the latter part of the section. The latter part of the section, therefore, conflicts with the first part of the section, because it does not name all of the various funds which could, of course, be included within the first part of the section. The legislature could have named specifically other funds the same as it did name some funds which may be so invested. It would seem, therefore, that the particular provision should prevail over the general. This view is fortified by the following section of Sutherland on Statutory Construction, Vol. II, Section 387:

“387. PARTICULAR AND GENERAL INTENT.

Where there are two provisions in a statute one of which is general and designed to apply to cases generally, and the other is particular and relates to only one case or subject within the scope of the general provision, then the particular provision must prevail; and if both cannot apply then the particular provision will be treated as an exception to the general provision. But the rule that a particular provision prevails over a general one only applies where the two conflict.”

It is not possible to glean the legislative intent, object or purpose except from the language used. It should be noted that the purpose of the section is expressly contained in its language, as follows:

“ * * * it being the purpose of this section to authorize the investment in bonds or other obligations of a housing authority of all sinking, insurance, retirement, compensation, pension, and trust funds, whether owned or controlled by private or public persons or officers.”

It cannot be said that the purpose clause has no relation to the other part of the section; it is contained in the same sentence. The purpose clause, therefore, clarifies and limits the first part of the section.

The next proposition to consider is whether or not the particular provisions of Section 1078-61, General Code, include or authorize the investment of capital and surplus of state banks and the funds of a

building and loan association in bonds of a housing authority. The principle of "expressio unius est exclusio alterius" applies to this section, with authorities too numerous to mention. Therefore, if authority for such investment is not expressly mentioned, it is therefore excluded. It is clear that the capital and surplus of a state bank and funds of a building and loan association are not sinking funds, neither are they insurance, retirement, compensation, pension nor trust funds. Not being expressly mentioned, such funds of a bank or a building and loan association are therefore excluded from the operation of this Section 1078-61, General Code. Sections 710-111 and 9066, General Code, are therefore not modified or broadened by this later enactment.

There is one provision contained in Section 9660, General Code, pertaining to the investment of funds of a building and loan association which should be clarified. It is quoted in part as follows:

"* * * and any such other securities as now are or hereafter may be accepted by the United States to secure government deposits in national banks."

The United States Depository Act has been reviewed and no provision was found which would authorize a national bank to hypothecate bonds of a state housing authority to the United States Government to secure its deposits. This puts at rest the question of whether a building and loan association may invest in bonds of a housing authority.

There remains one other angle to this question which comes up due to the fact that title guaranty and trust companies may, under certain conditions of Section 2296-4, General Code, become state depositories. Title guaranty and trust companies may establish a commercial or savings bank, or combination of both, in the manner provided by the banking act for the organization, conduct and supervision of commercial and savings banks. (See Section 710-168 to Section 710-171, inclusive.) In other words, a title guaranty and trust company, in order to become a state depository, must have been qualified under the banking law for either a commercial or savings bank, or a combination of both. It already has been pointed out that the investment provisions of the banking and building and loan acts have not been modified by the enactment of Section 1078-61, General Code. It therefore follows that bonds or other obligations of a local housing authority will not be among the assets of a title guaranty and trust company for hypothecation for public funds.

As to your last question, whether or not a bank may invest trust funds under its jurisdiction and control in bonds or other obligations of a housing authority, I am impelled to the opposite conclusion because trust funds are named specifically in the following language:

“and trust funds, whether owned or controlled by private or public persons or officers.”

It is therefore my opinion, in specific answer to your inquiry, that the effect of Section 1078-61, General Code, is not to enlarge and broaden the investment provisions of the Banking Act and the Building and Loan Act, and that trust funds under the jurisdiction and control of a state bank, by virtue of being expressly mentioned in said section, may be so invested in bonds or other obligations of a housing authority created under the present Ohio law.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2489.

OHIO RETAIL SALES TAX — ROOFING CONTRACTOR —
—WHERE HE PURCHASES UNIT OIL BURNER FROM
OHIO MANUFACTURER AND USES IT IN HIS BUSI-
NESS, SUCH UNIT OIL BURNER IS SUBJECT TO OHIO
RETAIL SALES TAX—SECTION 5546-2, G. C.

SYLLABUS:

When “D,” an Ohio roofing contractor, purchases a unit oil burner from “M,” an Ohio manufacturer, and “D” uses said unit oil burner in his business of installing and laying roofs for his customers, the purchase of such unit oil burner is subject to the Ohio Retail Sales Tax as provided by Section 5546-2 of the General Code of Ohio, and is not exempt from such tax under the provisions of Section 5546-1 of the General Code, or any other provisions of the Ohio Retail Sales Tax Act.

COLUMBUS, OHIO, May 19, 1938.

HON. ROBERT C. CARPENTER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication of recent date, which reads as follows:

“I would request your formal opinion upon the following set of facts:

“D, an Ohio roofing contractor, purchases a unit oil burner from M, an Ohio manufacturer, said article to be used