

3104.

SAVINGS AND LOAN ASSOCIATION—SECTION 9662 G. C. CONSTRUED
—UNDER STATEMENT OF FACTS ASSOCIATION MAY PURCHASE
CERTAIN INTEREST-BEARING OBLIGATIONS—OPINION NO. 2484,
PAGE 919, VOLUME II, OPINIONS OF ATTORNEY-GENERAL FOR
1921 DISTINGUISHED.

On the facts stated in the opinion, held, that the purchase of certain interest-bearing obligations by the savings and loan association was authorized by section 9662 of the General Code.

COLUMBUS, OHIO, May 16, 1922.

Department of Commerce, Division of Building and Loan Associations, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date relative to the power of a domestic savings and loan association to purchase certain bonds secured by a real estate mortgage or deed of trust, was duly received.

The facts, as I understand them, are substantially as follows:

The savings and loan association has acquired and now holds \$35,000 par value of bonds, out of a total issue of \$70,000, all of which are directly secured by a real estate mortgage or deed of trust. The bonds are interest-bearing obligations, and mature in semi-annual installments beginning on either January 15, 1923, or January 15, 1928, and ending on July 15, 1931.

Prior to the acquisition of the bonds by the savings and loan association, the real estate covered by the mortgage or deed of trust was duly appraised by the association, and it was determined that the total amount of bonds issued did not exceed two-thirds of the value of the property, as provided in the company's constitution and by-laws. No question is raised as to the legality of the bond issue, or the mortgage or deed of trust securing the same, nor as to the bonds being amply secured.

The mortgage or deed of trust securing the bonds provides, among other things, that in case of any default for sixty days in the payment of interest or principal, it shall be lawful for the mortgagee or trustee, and upon the request in writing of holders of not less than twenty-five per cent of the bonds outstanding it shall be the duty of the mortgagee or trustee, to declare the whole of the principal and interest to be due and payable, etc.

The savings and loan association involved in your inquiry is the holder and owner, as already stated, of \$35,000 par value of bonds,—or in other words, it owns fifty per cent of the total issue.

After careful consideration the conclusion has been reached upon the facts above stated, that the purchase of the bonds in question was authorized by section 9662 of the General Code, which, among other things, expressly authorizes savings and loan associations

“To buy * * * interest-bearing obligations secured by real estate mortgages, which shall in all respects comply with and be within the rules

adopted for making mortgage loans by the corporation making such investments."

The bonds in question are interest-bearing obligations, and they are also directly secured by a real estate mortgage or deed of trust, and in the latter respect there is presented a situation materially different from that involved in opinion No. 2484 addressed to your department under date of October 18, 1921. In the latter opinion the interest-bearing obligations which the company had acquired were not directly secured by a real estate mortgage, but instead were secured by the deposit of other securities, which latter securities were the ones that were directly secured by a real estate mortgage. And it is in this respect that the facts now under consideration present a situation materially different from that involved in opinion No. 2484 supra.

With respect to that part of section 9662 of the General Code which provides that the real estate mortgage securing the interest-bearing obligations shall comply with and be within the rules adopted by the association for making mortgage loans, it is our opinion that your letter and the other documents which have been submitted therewith disclose that this provision of the section has been substantially complied with, although in some minute details the terms of the mortgage or deed of trust under consideration may not exactly coincide with some of the provisions of the association's rules governing the making of mortgage loans, such, for example, as the provision in the mortgage or deed of trust which permits a default of sixty days before foreclosure, instead of a default for one month, as provided for in the association's rules. The association's rules, in this respect, however, appear to be optional, as they only go to the extent of declaring that the directors "may" order foreclosure upon one month's default, whereas the mortgage or deed of trust securing the bonds in question provides that if the default continues for sixty days, the mortgagee or trustee "shall", upon the request of the holders of at least twenty-five per cent of the bonds, declare all of the bonds and interest due and payable.

The principal or main purpose of section 9662, so far as the purchase of interest-bearing obligations is concerned, evidently is to provide that the securities purchased shall be directly and amply secured by real estate mortgage, and when the obligations are so secured by a mortgage which provides for foreclosure upon default to make certain payments, or to meet the other conditions of the mortgage, within a reasonable time to be specified therein, we believe that a substantial compliance with the association's rules adopted for making mortgage loans has been shown, and is sufficient, and, also, that it was not intended by the statute to require that the terms of the mortgage or deed of trust should strictly coincide with, and follow word by word, the mortgage form which the association requires its borrowers to execute and deliver to it as security for loans.

You are therefore advised that upon the facts disclosed in your letter and other papers that have been submitted in connection therewith, the savings and loan association did not exceed its authority in purchasing the bonds in question.

Respectfully,

JOHN G. PRICE,

Attorney-General.