

“1. When right of way deeds are executed and delivered to the state and are filed with a county recorder by a state department for recording, as provided for in Section 267, General Code, it is the duty of such department to pay to the county recorder the proper recording fees.

2. When right of way deeds are executed and are delivered to the state and filed by the Board of County Commissioners, as provided for in Section 267, General Code, it is the duty of such Board to pay to the county recorder the proper recording fees.”

I am therefore of the opinion that where reassessments are made by a subdivision under the provisions of Section 2293-5j or Amended Senate Bill No. 365 of the first special session of the 91st General Assembly, the county recorder is required to make the statutory charge for cancelling the memorials of the original assessments on registered lands.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5493.

DEPOSITORY—DEBENTURES BUT NOT MORTGAGES ISSUED UNDER NATIONAL HOUSING ACT PROPER SECURITY FOR STATE FUNDS.

*SYLLABUS:*

1. *Debentures issued by the Federal Housing Administrator under the provisions of the National Housing Act of June 27, 1934, Title 12, Section 1710 U.S.C.A., 48 Stat. 1246, in exchange for mortgages insured under such act prior to July 1, 1937, are interest bearing obligations for the payment of the principal and interest of which the faith of the United States is pledged and may be hypothecated to secure the deposit of state funds under the provisions of Section 330-3, General Code.*

2. *Mortgages which are insured by the Federal Housing Administrator under the provisions of such act of Congress are not such interest bearing obligations for the payment of the principal and interest of which the faith of the United States is pledged as may be hypothecated to secure the deposit of state funds under authority of Section 330-3, General Code.*

COLUMBUS, OHIO, May 9, 1936.

HON. HARRY S. DAY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

"We have received the following communication from the Union Bank and Savings Company, Bellevue, Ohio:

'Will you kindly advise at your early convenience if full insured mortgages issued under the Federal Housing Administration Plan are acceptable as security for state funds placed on deposit with banks. Your kind attention hereto will be greatly appreciated.'

The mortgages referred to in the letter are insured under the provisions of the National Housing Act—HR 9620 (Public—No. 479-73rd Congress).

We respectfully request your opinion as to whether or not mortgages insured under the National Housing Act are to be considered as coming within the scope of the provisions of Section 330-3 of the General Code of Ohio."

The pertinent language of Section 330-3, General Code, providing the security that may be hypothecated to secure the deposit of state funds reads as follows:

"The treasurer of state before making such deposits shall require each and every approved bank or trust company to deposit with him bonds, or other interest bearing obligations of the United States, or those for the payment of the principal and interest of which the faith of the United States is pledged \*\*\*."

The foregoing section contains no reference to the hypothecation of mortgages to secure state funds and your inquiry accordingly requires a determination of whether or not the insured mortgages referred to are interest bearing obligations "for the payment of principal and interest of which the faith of the United States is pledged."

Under Sections 1707, et seq., Title 12, U. S. Code Annotated, which sections are part of the National Housing Act of June 27, 1934, c. 847, 48 Stat. 1246, certain mortgages may be insured as therein set forth and I assume your reference is to mortgages so insured. Section 1708 creates what is designated as a mutual mortgage insurance fund and Section 1709 provides certain limitations and provisions as to what mortgages shall be eligible to be insured by the National Housing Administration.

Certain other mortgages on so-called low cost housing property may be insured as provided in Section 1713.

The features of this mortgage insurance with respect to a determination of whether or not mortgages so insured are interest bearing obligations for the payment of principal and interest of which the faith of the United States is pledged, are set forth in Section 1710 of this act. Paragraph (a) thereof authorizes the issuance of certain debentures by the Federal Housing Administrator under certain circumstances in the event of foreclosure or the taking possession of the mortgaged property by the mortgagee in accordance with regulations of the Administrator. This paragraph reads as follows:

“In any case in which the mortgagee under an insured mortgage shall have foreclosed and taken possession of the mortgaged property in accordance with regulations of, and within a period to be determined by, the Administrator, or shall, with the consent of the Administrator, have otherwise acquired such property from the mortgagor after default, the mortgagee shall be entitled, upon the prompt conveyance to the Administrator of title to such property satisfactory to him and the assignment to him of all claims of the mortgagee against the mortgagor arising out of the mortgage transaction or foreclosure proceedings, to receive the benefits of the insurance as hereinafter provided. Upon such conveyance and assignment the obligation of the mortgagee to pay the annual premium charges for insurance shall cease and the Administrator shall issue to the mortgagee debentures having a total face value equal to the value of the mortgage on the date of the delivery of the property to the Administrator, and a certificate of claim, as hereinafter provided. For the purposes of this subsection, the value of the mortgage shall be determined, in accordance with rules and regulations prescribed by the Administrator, by adding to the amount of the principal of the mortgage which is unpaid on the date of such delivery, (1) interest on such unpaid principal from the date foreclosure proceedings were instituted or the property was otherwise acquired as provided in this subsection to the date of such delivery at the rate provided for in the debentures issued to the mortgagee, less any amount received on account of interest accruing on such unpaid principal between such dates, and (2) the amount of all payments which have been made by the mortgagee for taxes and insurance on the property mortgaged.”

The features of the debentures authorized to be issued by the Ad-

ministrator in the foregoing paragraph are provided in paragraph (b) of the section in the following language:

“The debentures issued by the Administrator under this section to any mortgagee shall bear interest at a rate determined by the Administrator at the time the mortgage was offered for insurance, but not to exceed 3 per centum per annum, payable semi-annually on the 1st day of January and the 1st day of July of each year, and shall mature three years after the 1st day of July following the maturity date of the mortgage in exchange for which the debentures were issued. All such debentures shall be subject only to such Federal, State, and local taxes as the mortgages in exchange for which they are issued would be subject to in the hands of the holder of the debentures and shall be a liability of the Fund only; except that debentures issued in exchange for mortgages insured under this section prior to July 1, 1937, shall be fully guaranteed as to principal and interest by the United States. In the event that the amount in the Fund is insufficient to pay upon demand, when due, the principal of or interest on any debentures so guaranteed, the Secretary of the Treasury shall pay to the holders the amount thereof which is hereby authorized to be appropriated out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to all the rights of the holders of such debentures.”

The remaining paragraphs of this section are not pertinent to a determination of the specific question presented. There can be little doubt in my judgment but that debentures issued by the Federal Housing Administrator under authority of Section 1710, *supra*, prior to July 1, 1937, are interest bearing obligations for the payment of the principal and interest of which the faith of the United States is pledged and therefore such security as may be hypothecated to secure the deposit of state funds in accordance with Section 330-3, General Code,—paragraph (b) of Section 1710 expressly providing that these debentures which are issued in exchange for mortgages insured prior to July 1, 1937, “shall be fully guaranteed as to principal and interest by the United States.”

The question you present in your letter, however, is not one of whether or not such debentures as are authorized to be issued by the Federal Housing Administrator may be hypothecated to secure the deposit of state funds, but rather whether or not mortgages insured under the foregoing act may be so hypothecated. I do not find upon examination any provision to the effect that the obligation of the mortgagor to pay

principal and interest upon a mortgage which is so insured is directly guaranteed by the United States. There is no question but that in many instances in event of default followed by the issuance of debentures by the Administrator, the ultimate result would be the same as though the United States had guaranteed the payment of the mortgagor's obligation. However, before such a situation arises the mortgagee has the obligation, first, to meet the regulations of the Administrator in the acquisition of the property mortgaged and within the time determined by the Administrator, and, second, to promptly convey to the Administrator title to such property satisfactory to him and to assign to the Administrator all claims of the mortgagee against the mortgagor arising out of the mortgage transaction or foreclosure proceedings. Upon such conveyance to the Administrator the value of the mortgage shall be determined in accordance with rules and regulations of the Administrator as provided in paragraph (a) of Section 1710, supra. Before any debenture may be issued by the Administrator, it would seem that an insured mortgage hypothecated to the Treasurer of State would have to be surrendered by the Treasurer. In other words, the interest bearing obligation, for the payment of the principal and interest of which the faith of the United States is pledged, is not the insured mortgage but the debentures authorized to be issued by the Federal Housing Administrator under Section 1710, supra. It accordingly follows that your question must be answered in the negative.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5494.

DISTRICT TUBERCULOSIS HOSPITAL — MAY PURCHASE  
AUTOMOBILE FOR USE IN CONNECTION WITH PROPER  
ADMINISTRATION OF HOSPITAL.

*SYLLABUS:*

*Although there is no express authority for a board of trustees of a district tuberculosis hospital to purchase an automobile for use in connection with the work of the hospital, where conditions are such that the successful, economical and efficient performance of the board's duties in the maintenance of the hospital require the use of an automobile, the board may in its discretion, lawfully, purchase the same. The discretion of the board in determining whether or not such conditions exist, is limited only by its abuse.*