

2240.

## BUILDING AND LOAN ASSOCIATIONS—INVESTMENT OF IDLE FUNDS.

## SYLLABUS:

*Building and loan associations in the investment of idle funds in "such other securities as now are or hereafter may be accepted by the United States to secure government deposits in national banks;" as provided in Section 9660, General Code, are not limited to investments in such securities only as have actually been accepted, that is, hypothecated and later released for the market by substitution or otherwise, but may invest such funds in the classes of securities specified in the regulations promulgated by the secretary of the treasury to secure government deposits in national banks and in the regulations promulgated by the board of trustees of the Postal Savings System to secure deposits of postal savings funds in national and state banks.*

COLUMBUS, OHIO, June 18, 1928.

HON. J. W. TANNEHILL, *Superintendent, Division of Building and Loan Associations, Columbus, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent request for my opinion, which reads, in part, as follows:

"Section 9660 of the General Code of Ohio authorizes building and loan associations to invest idle funds in certain designated bonds or interest bearing obligations and 'in such other securities as now are or hereafter may be accepted by the United States to secure government deposits in national banks.' Will you please advise whether or not the provision 'as now are or hereafter may be accepted' limits investment of idle funds by building and loan associations to such classes of these bonds as have actually been hypothecated with the federal government to secure deposits in national banks (or under an opinion of the Attorney General of Ohio to secure postal savings deposits), or may such funds be invested in any bonds which meet all of the qualifications outlined in Section 8 of the regulations governing the deposits of postal savings as set out in Pratt's Digest, 1924, page 514?"

Until recently this question has not been a pertinent one because of the fact that these institutions did not have a great amount of difficulty in placing their funds in the ordinary manner but with the accumulation of money in the past few years and the fact that opportunities to make loans of a kind acceptable to these associations have declined considerably the question of outside investments has become more prominent and this department feels that at this time demands a great deal more attention than ordinarily would be the case."

With your communication you have submitted a memorandum prepared by a firm of attorneys of Toledo, Ohio, in support of the proposition that the practical and correct interpretation to be given to that portion of Section 9660, General Code, quoted in your communication, is that building and loan associations have power to invest their idle funds in such classes of securities as are acceptable for the purpose of securing postal savings deposits under the rules and regulations prescribed by the board of trustees of the Postal Savings System, under authority of Section 7588, United States Compiled Statutes, rather than to limit the investment of such funds to those securities only which have actually been accepted as such security, and then released for the market by substitution.

Section 9660, General Code, authorizes a building and loan association :

*"To invest any of its idle funds, or any part thereof, in bonds or interest bearing obligations of the United States, or of the District of Columbia, or of the State of Ohio, or of any county, township, school district, or other political division in the State of Ohio, or of any incorporated city or village, in the State of Ohio, or in farm loan bonds issued under the provisions of the act of congress known as the federal farm loan act, approved July 17, 1916, and amendments thereto; and in such other securities as now are or hereafter may be accepted by the United States to secure government deposits in national banks. But such investments at no time shall amount in the aggregate to more than twenty per cent of the assets of such corporation."* (Italics the writer's.)

In an opinion of this department rendered to the Inspector of Building and Loan Associations on October 30, 1916, appearing in the Opinions of the Attorney General for that year, Vol. 2, p. 1720, it was held that the provisions of Section 9660, General Code, italicized above, authorizes building and loan associations to invest their idle funds in such securities as are accepted by the United States government to secure postal savings deposits in national banks. On page 1722 it is said :

*"Postal savings funds deposited in banks under authority of said Section 7588 of the United States Compiled Statutes above quoted, by virtue of the language of that section and other sections of the same act, are clearly government deposits within the meaning of said Section 9660 of the General Code of Ohio. Such funds, strictly speaking, may not be public funds, yet they are under the custody and control of the federal government acting through its duly authorized agency, and are deposited in banks by direct authority of the federal government.*

*I am, therefore, of the opinion that building and loan associations of Ohio may invest their idle funds in such securities as may be designated by the board of trustees for the control, supervision, and the administration of the postal savings depository offices acting under the authority conferred upon them by said Section 7588 of the United States Compiled Statutes herein quoted."*

The provisions of law relative to the organization, powers and supervision of building and loan associations are found in Sections 9643 to 9675, General Code, both inclusive. Such associations are, primarily, as stated in Section 9643, corporations for the purpose of raising money to be loaned to their members and others. Such associations are creatures of statute and, as such, are limited to the exercise of such powers as are expressly granted by statute and such as are necessary to carry the powers expressly granted into effect. Building and loan associations are given power to raise money by receiving deposits (Section 9648), issuing stock upon certificate or upon written subscription (Section 9649), and assessing and collecting dues, fines, interest and premiums on loans (Section 9650). From the funds so raised, building and loan associations are given power in Section 9657 to make loans to members and others, but only upon the securities mentioned in that section, among which are :

"\* \* \*

Third. Obligations secured by pledge of any of the securities provided for in Section 9660 of the General Code not to exceed, however, ten per cent. of the assets of the association.

\* \* \*

While building and loan associations are formed primarily for the purpose of making loans to members and others, there are times in the history of every such association when the demand for loans is exceeded by the money available for that purpose, and unless some provision is made for the investment of such excess moneys, so as to produce income therefrom, the association may find itself facing serious losses. Recognizing that fact and to provide against such a contingency, the Legislature enacted Section 9660, General Code, *supra*, granting authority to building and loan associations to invest excess or idle funds in certain designated securities, which may be readily converted into cash, as the needs of the association require. Among the securities in which idle funds may be invested are:

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

In its narrow and restricted sense, the word “accepted,” as used in Section 9660, General Code, *supra*, would seem to limit building and loan associations in the investment of idle funds in only such securities as have actually been hypothecated as security for the deposit of government funds and have later been released for the market by the substitution of other securities or otherwise. It is obvious that if such a construction were to be placed upon the language in question it would practically close the door to all investments of idle funds except as to the securities specifically mentioned; that is, bonds of the United States, District of Columbia, State of Ohio, etc. I do not believe this to be the correct interpretation of the statute.

The word “accept” is defined in Webster’s New International Dictionary as:

1. “To receive (a thing offered) with a consenting mind; as to accept a gift.
2. To receive with favor; to approve.”

It will be seen from the above definition that the word “accept” is not restricted in meaning to the actual receipt of a thing but may include “approval.” If the narrower interpretation be adopted, it renders the language of Section 9660, General Code, now under consideration, virtually inoperative and meaningless, and it cannot be presumed that the Legislature would grant to building and loan associations the power to invest idle funds in this additional class of securities and in the same breath take it away for all practical purposes. It is a well known rule of statutory construction that a statute is to be construed with reference to its manifest object, and if the language is susceptible of two constructions, one of which will carry out and the other will defeat such manifest object, it should receive the former construction. (Lewis’ Sutherland Statutory Construction, Vol. 2, Sec. 369). In the same work it is said in Vol. 2, Sec. 376:

“The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the Legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. \* \* \*. When the intention can be collected from the statute itself, words may be modified, altered, supplied or disregarded so as to obviate any repugnance or inconsistency with such intention. \* \* \*”

In accordance with the provisions of Sections 9691 and 7588, U. S. Comp. Stat., the secretary of the treasury and the board of trustees of the Postal Savings System, respectively, have promulgated regulations specifying, among other things, the classes

of securities acceptable to secure government deposits in national banks and deposits of postal savings funds in national and state banks. Without quoting the portions of the regulations relative to such securities, it is sufficient to say that they prescribe what *classes* of securities are acceptable rather than to specify specific securities. The determination as to whether or not a specific security offered meets the test laid down in the regulations is purely a ministerial function which a building and loan association, having access to the regulations, is able to determine for itself.

Answering your question specifically, it is my opinion that building and loan associations in the investment of idle funds in "such other securities as now are or hereafter may be accepted by the United States to secure government deposits in national banks," as provided in Section 9660, General Code, are not limited to investments in such securities only as have actually been accepted, that is, hypothecated and later released for the market by substitution or otherwise, but may invest such funds in the classes of securities specified in the regulations promulgated by the secretary of the treasury to secure government deposits in national banks and in the regulations promulgated by the board of trustees of the Postal Savings System to secure deposits of postal savings funds in national and state banks.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

2241.

SCHOOLS—MERGER OF DISTRICTS—INCLUSION OF ENTIRE VILLAGE  
OR RURAL DISTRICTS—SUCCESSION TO ASSETS AND LIABILITIES  
—APPOINTMENT OF NEW BOARD OF EDUCATION.

SYLLABUS:

1. *Upon the creation of a new school district, by authority of Section 4736, General Code, comprising all the territory formerly included within a village or rural school district, and parts of other districts, the corporate existence of the rural or village school district, whose entire territory is embraced within the newly created district, is merged into the newly created corporation, the new corporation, as successor to the former school district, succeeds to all the funds and property of the former district which is merged into it, and is answerable for all its liabilities, including obligations growing out of contracts with teachers and duly designated depositories.*

2. *When a new school district is created, consisting in part of all the territory of a former school district, the board of education of the former district is abolished and the position of its clerk is likewise abolished. A board of education should be appointed for the new district as provided in Section 4736, General Code, which board after appointment should organize in the manner provided for in Section 4747, General Code.*

COLUMBUS, OHIO, June 18, 1928.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

"Under the provisions of Section 4736, General Code, a county board of education created a new district out of a whole village district and a part of a