

3215

BUILDING AND LOAN ASSOCIATIONS — PERMITTED INVESTMENTS — OHIO TURNPIKE REVENUE BONDS NOT PERMITTED — §§1151.34, 5537.01 *et seq.* R.C.

SYLLABUS:

Under the provisions of Section 1151.34, Revised Code, a building and loan association, chartered under the laws of the state, is not authorized to invest its assets in bonds issued under the provisions of Section 5537.01, *et seq.*, relating to the establishment of the Ohio Turnpike Commission.

Columbus, Ohio, January 7, 1959

Hon. George R. Hoellrich, Superintendent of Building  
and Loan Associations  
Columbus, Ohio

Dear Sir:

You have requested my opinion on the question whether building and loan associations, chartered under the laws of Ohio, are authorized to invest their funds in bonds issued under the Ohio Turnpike Act, Sections 5537.01 to 5537.23, inclusive, Revised Code.

Section 1151.34, Revised Code, referred to in your letter, relating to investments by building and loan associations reads in part as follows:

“(A) A building and loan association may invest any of its idle funds in bonds or interest-bearing obligations of the United States or for which the *faith and credit of the United States are pledged* for the payment of principal and interest.

“(B) Such association may invest not more than ten per cent of its assets *in bonds or interest-bearing obligations* of the District of Columbia, *of this state*, of any county, township, school district, or other political division of this state, *or of any municipal corporation* in this state \* \* \*.” (Emphasis added)

Section 5537.08, Revised Code, being a part of the Act establishing the Ohio Turnpike Commission, reads, in pertinent part, as follows:

“The Commission is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of

*turnpike revenue bonds of the state* for the purpose of paying any part of the cost of any one or more turnpike projects. The principal of and the interest on such bonds shall be payable solely from the funds provided by sections 5537.01 to 5537.23, inclusive, of the Revised Code, for such payment.”

It is further provided in this section :

“All bonds issued under sections 5537.01 to 5537.23, inclusive, of the Revised Code, shall have all the qualities and incidents of negotiable instruments under the negotiable instruments law of this state.”

The one question raised by your inquiry is whether the bonds issued by the turnpike commission, pursuant to the statutes above noted, are “bonds or interest bearing obligations of the State of Ohio.” If we may give to the words used by the legislature enacting Section 5537.08, *supra*, their natural meaning, they are bonds of the state, for the language of the statute is “turnpike revenue bonds *of the state.*”

The fact that they are designated as “turnpike revenue bonds,” does not alter the fact that they are characterized as bonds of the state.

It may be noted further that is is provided in Section 5537.11, Revised Code, that :

“Turnpike revenue bonds issued under sections 5537.01 to 5537.23, inclusive, of the Revised Code, *do not constitute a debt, or a pledge of the faith and credit, of the state* or of any political subdivision thereof, but such bonds shall be payable *solely from the funds pledged for their payment* as authorized by such sections \* \* \*.” (Emphasis added)

The word “bond” implies that someone is *bound*; that the maker of the same binds himself to a definite obligation. If we refer to the ordinary definition of “bond” as given by Webster’s dictionary, we find the following given as a definition from the standpoint of “law”:

“A writing under seal by which a person binds himself to pay a certain sum on or before a future date appointed.”

The use of the word “bond” as an evidence of debt appears to imply at least as definite an obligation as a promissory note. A promissory note is defined by Bouvier’s Dictionary as follows:

“A written promise to pay a certain sum of money at a future time, unconditionally.”

It is made very clear by the above quotation from Section 5531.11, Revised Code, that in authorizing the issuance of these “turnpike bonds”

the state does not obligate itself to pay a certain sum at a definite date. On the contrary, it is clearly and specifically stated that the state shall not be bound, that these bonds do not constitute a debt, and are not to be considered as a pledge of the faith and credit of the state. The only ground upon which we could argue that the legislature intended to authorize a building and loan association to invest the funds entrusted to it by its patrons in these turnpike bonds, would be the fact that the legislature used the words "bonds of the state," and that in authorizing the issuance of "turnpike revenue bonds," it added the words "of the state."

It appears to me that an alternative view is equally logical, namely that the words "bonds of the state" may be given a conservative or liberal construction, depending on the surrounding circumstances, and the manifest purposes behind the law.

Consider that we are here dealing with the savings of a large number of people who have entrusted such savings to the custody of an institution chartered by the state, in full faith that their savings will be preserved and safely invested for their benefit. It appears to me that we must ascribe to the words authorizing investment of these funds in "bonds of the state," if possible, a meaning which will afford these depositors the greatest security. If we are to take the other alternative and conclude that the building and loan association may invest in so-called "revenue bonds" such as are authorized by the Turnpike Act, we would be forced to go further and sanction their investment in any of the revenue bonds or mortgage bonds issued by a municipality under the provisions of Section 12 of Article XVIII of the Constitution, many of which could scarcely be deemed conservative investments.

We find that the legislature has in some cases authorized semi-public bodies to invest their funds in these less conservative securities. Examples of this are found in the statutes relating to the Public Employees Retirement System, the State Teachers Retirement System and the School Employees Retirement System.

Take for example the State Teachers Retirement System. Section 3307.15, Revised Code, authorizes the trustees of that system to invest its funds among others in the following securities :

"(B) The following state, county, and municipal obligations :

"(1) Bonds, notes, certificates of indebtedness, or other obligations issued, assumed or guaranteed by this state, any

authority, board of trustees, commission or other agency of this state, any county, city, village or other municipal corporation, any township, school district, conservancy district, sanitary district, or other legally constituted taxing or bond issuing authority, political subdivision or public corporation now or hereafter organized under the laws of this state, *whether such bonds, notes, certificates of indebtedness or other obligations are secured by the general taxing powers*, by pledge of or lien upon a designated tax or taxes, levy or levies, impost or imposts, excise or excises, singly or in combination, by pledge of or lien upon the *revenues derived from a publicly owned facility* or facilities for the use or services of which charges are or are to be made, or by other means now or hereafter authorized under the laws of this state." (Emphasis added)

The General Assembly has not seen fit to grant expressly, any such indulgence to building and loan associations in the investment of their assets and funds. It is notable that the statute governing investments of trust funds (Section 2109.37, Revised Code) while offering a large range of investments, confines itself to absolute obligations, and in no respect countenances revenue bonds of any public or private body. A building and loan association, has in my opinion, as high a duty as trustee of its depositors' funds, as has a fiduciary trustee with reference to the funds of his estate. I call attention further, to the provisions of Section 1105.15, Revised Code, prescribing the securities in which banks chartered under the laws of the state, may invest their bonds. They are strictly limited, so far as bonds of the state or its subdivisions are concerned, to those "for which the full faith and credit" of the issuing authority are pledged.

I am convinced that in choosing between the conservative and liberal definitions of "bonds of the state", as applied to investment of building and loan association assets, we should choose the conservative, and it is, therefore, my opinion that under the provisions of Section 1151.34, Revised Code, a building and loan association, chartered under the laws of the state, is not authorized to invest its assets in bonds issued under the provisions of Section 3537.01, *et seq.*, relating to the establishment of the Ohio Turnpike Commission.

Respectfully,  
WILLIAM SAXBE  
Attorney General