

1015

BUILDING AND LOAN ASSOCIATIONS, SUPERINTENDENT:

1. NOT NECESSARY FOR BUILDING AND LOAN ASSOCIATIONS TO SECURE APPROVAL TO SELL BONDS DESCRIBED IN SECTION 9660 G. C.
2. NOT NECESSARY TO HAVE AUTHORITY TO PLEDGE OR ASSIGN BONDS DESCRIBED IN SECTION 9660 G. C.—NECESSARY TO HAVE AUTHORITY TO PLEDGE OR ASSIGN ANY INTEREST BEARING OBLIGATIONS SECURED BY REAL ESTATE MORTGAGES AS SECURITY FOR BORROWED FUNDS.
3. BUILDING AND LOAN ASSOCIATION MAY, WITHOUT LIMITATION AS TO AMOUNT, BORROW MONEY TO EXTENT FUNDS ARE SECURED OR GUARANTEED BY OBLIGATIONS OF UNITED STATES OR INSTRUMENTALITIES THEREOF—SECTION 9656 G. C.

SYLLABUS:

1. The approval of the superintendent of building and loan associations is not necessary to be secured for authority to sell by the building and loan associations the kinds of bonds described in Section 9660, General Code.
2. The approval of the superintendent of building and loan associations is not necessary for authority to pledge or assign the kinds of bonds described in Section 9660, General Code, but is necessary to pledge or assign any interest bearing obligations secured by real estate mortgages as security for borrowed funds.
3. Under authority of Section 9656, General Code, a building and loan association may, without limitation as to amount, borrow money to the extent said borrowed funds are secured or guaranteed by obligations of the United States or instrumentalities thereof.

Columbus, Ohio, June 15, 1946

Hon. Francis L. Vesey, Superintendent, Division of Building and Loan Associations
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“I wish to solicit your opinion on the following question in order that I may properly administer the affairs of building and loan associations chartered by the state of Ohio.

Situation—During the past several years building and loan associations in Ohio have invested increasing percentages of their assets in interest bearing obligations of the United States, as well as those of the State of Ohio and political subdivisions thereof, all in accord with the provisions of Section 9660 of the General Code of Ohio. At the present time such investments constitute approximately 35% of all assets.

Many of these obligations were purchased in support of the war effort, and also because of the lack of sound real estate mortgages during the period of building restrictions. They proved to be a source of income because of the increased market value of bonds caused by the demand for such securities, and many associations realized large earnings through the purchase and sale of bonds.

In a number of instances associations have pledged the bonds purchased as security for funds borrowed to finance (other) such purchases, and there are indications that this operation may lean toward speculation.

In other instances associations have pledged bonds to secure money borrowed for the purpose of making real estate mortgage loans. When this department was appraised of such a situation it required the borrowing institution to secure the written approval of the Superintendent before the loan was consummated. This was done under our interpretation of Section 9662 of the General Code of Ohio and Ohio Attorney General's Opinion #3091 dated January 25, 1926, the last paragraph of which reads as follows :

'You are therefore advised that the consent required under Section 9662 of the General Code is necessary to be obtained in connection with the *pledging or assigning of interest bearing obligations of building and loan associations as collateral security.*'

Underscoring our own.

Question—The question we submit for your opinion is in three parts as follows:

First —Is the approval of the Superintendent necessary to sell bonds?

Second —Is the approval of the Superintendent necessary to pledge or assign any interest bearing obligations as security for borrowed money?

Third —If such approval is not necessary would—borrowed money in excess of thirty percent of the amount paid in by stockholders and depositors at the time the money is borrowed be a violation of Section 9656 of the General Code of Ohio?"

I shall direct my attention to your first question, which reads:

"Is the approval of the Superintendent necessary to sell bonds?"

Section 9660, General Code, authorizes a building and loan association to invest "without limitation any of its idle funds, in bonds or interest bearing obligations of the United States, or those for which the faith and credit of the United States are pledged" and also authorizes building and loan associations to invest "not to exceed ten percent of its assets" in certain other kinds of bonds enumerated therein. It would seem that the power to invest in such bonds would necessarily carry with it the power to sell and reinvest the proceeds within the judgment of the proper officers of the building and loan association. Upon examining the statutes pertaining to building and loan associations I find no provision requiring approval by the superintendent of building and loan associations to sell such bonds.

Your second question reads :

“Is the approval of the Superintendent necessary to pledge or assign any interest bearing obligations as security for borrowed money?”

Section 9662, General Code, provides as follows :

“To buy but not to sell except with the written consent previously granted by the superintendent of building and loan associations 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. Such mortgage investments may be held and reported as mortgage loans.”

The limitation upon the authority to sell interest bearing obligations owned by a building and loan association is restricted to those secured by real estate mortgages, that is, a building and loan association may not without the written consent of the superintendent of building and loan associations, sell its notes secured by real estate mortgages. I find nothing in this statute or in any other statute which is applicable to the sale, pledging or assigning of the kinds of bonds mentioned in Section 9660, General Code, as a proper investment for idle funds.

The opinion of the Attorney General for 1926, No. 3091, from which you have quoted, had to do with the pledging by building and loan associations of interest bearing obligations secured by real estate mortgages and did not take up the question of the pledging of other types of securities. While the sentence which you have quoted from that opinion might be broad enough to include bonds generally, a reading of the entire opinion makes it clear that that opinion dealt only with the pledging of interest bearing obligations secured by real estate mortgages.

Your third question reads :

“If such approval is not necessary would borrowed money in excess of thirty percent of the amount paid in by stockholders and depositors at the time the money is borrowed be a violation of Section 9656 of the General Code of Ohio?”

Section 9656 of the General Code was amended effective August 5, 1945, and now provides as follows: Building and loan associations shall have authority

“To borrow money to a total amount not exceeding thirty per cent of the amount paid in by stockholders and depositors at the time the money is borrowed, and to borrow additional amounts of money to the extent said additional borrowed funds are secured or guaranteed by obligations of the United States or instrumentalities thereof.” (Emphasis added.)

A reading of this statute, as now amended, answers, I think, your question, namely, that building and loan associations may borrow not exceeding thirty percent of the amount paid in by stockholders and depositors at the time the money is borrowed and may also borrow additional amounts of money to the extent said additional borrowed funds are secured by obligations of the United States or instrumentalities thereof. In other words, no limitation as to the amount is placed upon a building and loan association in borrowing money when government bonds belonging to the association are pledged as security.

While Section 9660, General Code, authorizes the investing by building and loan associations of their idle funds in certain types of bonds, it should, however, be pointed out that a building and loan association, in exercising its authority to borrow money, as provided for in Section 9656, General Code, must do so having in mind the proper needs of the association for such borrowed money and such proper needs certainly do not include the right to borrow money for the purpose of speculating in government bonds.

In specific answer to your questions, I am therefore of the opinion that:

1. The approval of the superintendent of building and loan associations is not necessary to be secured for authority to sell by the building and loan associations the kinds of bonds described in Section 9660, General Code.
2. The approval of the superintendent of building and loan associations is not necessary for authority to pledge or assign the kinds of bonds described in Section 9660, General Code, but is necessary to pledge or

assign any interest bearing obligations secured by real estate mortgages as security for borrowed funds.

3. Under authority of Section 9656, General Code, a building and loan association may, without limitation as to amount, borrow money to the extent said borrowed funds are secured or guaranteed by obligations of the United States or instrumentalities thereof.

Respectfully,

HUGH S. JENKINS
Attorney General