

a county or which by resolution extend that service to all the inhabitants of a county in pursuance of Section 5625-20, may share in the distribution of the proceeds of classified property taxes as provided by Sections 5625-24 and 5639, General Code, provided the library in question has in the past received public aid in the maintenance of its library service or is eligible to or becomes eligible to be granted such aid either directly under laws authorizing the same or by reason of contracts made by virtue of Sections 2455 or 7632 of the General Code of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4272.

INSURANCE--FUNDS OF DOMESTIC LIFE INSURANCE COMPANY MAY
BE INVESTED IN BONDS OR NOTES SECURED BY MORTGAGES
INSURED UNDER NATIONAL HOUSING ACT.

SYLLABUS:

The capital, surplus and accumulations of a domestic life insurance company may be invested in bonds or notes secured by mortgages insured under the provisions of the National Housing Act, even though such mortgages do not comply with the other provisions of Section 9357, General Code.

COLUMBUS, OHIO, May 20, 1935.

HON. ROBERT L. BOWEN, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This acknowledges receipt of your communication which reads as follows:

“Section 9357 of the General Code, dealing with the investment of capital, surplus and accumulations of domestic life insurance companies, contains a provision in sub-paragraph H(a) that the actual market value of the real estate supporting said mortgage shall be at least double the amount loaned thereon at the time of the investment.

(a-1) of Section 9357 authorizes the investment by such company—

‘In bonds or notes secured by mortgages insured under the provisions of the act of the congress of the United States entitled the “National Housing Act”. Am. of 2nd Sp. Sess. 90th G. A.’

The regulations under Title 2 of the ‘National Housing Act’ provide, among other things, that—

‘The original principal obligation of the mortgage may not exceed \$16,000 nor 80% of the appraised value of the property as determined by an appraisal of the Federal Housing Administration.’

By reason of the various provisions mentioned above I am confronted with the following question which must be determined before I can pass upon the eligibility of such ‘National Housing Act’ securities as an investment for such companies. Therefore, I respectfully request your opinion on the following question:

Does the requirement in Sec. 9357, sub-paragraph H(a), limiting mortgages to 50% of the actual market value at the time of the investment preclude such domestic life insurance companies from investing in the bonds or notes secured by mortgages under the 'National Housing Act' because such latter mortgages may be issued to the extent of 80% of the appraised value of the real estate supporting said mortgage?"

Section 9357, General Code, reads in part as follows:

"The capital, surplus and all accumulations of every domestic life insurance company shall be invested as follows:

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H. (a) In bonds and/or mortgages secured by a first lien upon unencumbered fee simple real estate in any state of the United States, in the District of Columbia or the Dominion of Canada, the actual market value of which is at least double the amount loaned thereon at the time of the investment, as shown by a valuation and appraisal in writing made under oath by two (2) real estate owners, residents of the county or local district where the real estate is located. If the amount loaned exceeds one-half of the value of the land mortgaged, exclusive of structures thereon, such structure must be insured in an authorized fire insurance company or companies, in an amount not less than the difference between one-half of the value of such land, exclusive of structures, and the amount loaned, and the policy or policies shall be payable to and held by the mortgagee or by a trustee in its behalf.

(a-1) In bonds or notes secured by mortgages insured under the provisions of the act of the congress of the United States entitled the 'National Housing Act'.

(b) In bonds or notes secured by mortgages or deeds of trust on leasehold estates on real estate for not less than ninety-nine (99) years, renewable forever, unencumbered, except rentals accruing therefrom to the owner of the fee, providing the amount loaned thereon plus the value of the ground rent capitalized at five per cent (5%) does not exceed sixty percent (60%) of the total market value of the real estate, buildings and improvement by appraisements in writing made under oath by two (2) real estate owners, residents of the county or local district wherein the real estate is located. If the amount loaned plus the value of the ground rent capitalized at five per cent exceeds fifty per cent (50%) of the value of the land, exclusive of improvements thereon, such improvements shall be insured against fire for the benefit of the mortgagee in an amount not less than the difference between fifty per cent (50%) of the value of such land, exclusive of buildings, and the amount loaned, and the policy or policies for such amount shall be payable to and held by the mortgagee or may be payable to and held by a trustee named in the lease who shall be required by the terms of said lease to use and apply the proceeds of such insurance to repairing, restoring and/or rebuilding such buildings."

Prior to its recent amendment which became effective March 9, 1935, said section did not contain paragraph H(a-1), the only change made by said amendment being the provision authorizing investments in bonds or notes secured by mortgages insured under the provisions of the National Housing Act. By the National Housing Act a mutual mortgage insurance fund is set up and the Federal Housing Administrator is authorized, upon application of the mortgagee, to insure as provided therein any mortgage offered to him within one year from the date of its execution which is eligible for insurance under the provisions of the act. The act also provides that to be eligible

for insurance under this section, a mortgage shall * * * "(2) Involve a principal obligation (including such initial service charges and appraisal and other fees as the Administrator shall approve) in an amount not to exceed \$16,000.00, and not to exceed 80 per centum of the appraised value of the property as of the date the mortgage is executed."

Apparently it was intended that paragraph H(a-1) of Section 9357 was to operate as an exception to the general provisions of said statute with reference to mortgages. The legislature had some purpose in amending the act and that purpose was, as said paragraph clearly indicates, to authorize investments in bonds and notes secured by insured mortgages. To hold that the general provisions of the statute preclude such investments would render the amendment meaningless.

Another question which presents itself is whether a domestic life insurance company, in investing in bonds or notes secured by such insured mortgages, would be confined to those mortgages upon fee simple real estate which are not more in amount than half of the value of such property and to those mortgages or leasehold estates of not less than 99 years, renewable forever, subject to the restrictions of paragraph H(b). Under the National Housing Act, mortgages or leaseholds under leases having a period to run of 50 years or more, may in certain cases be insured. To hold that insured mortgages must comply with the provisions of paragraph H(a) or H(b) before bonds or notes secured thereby may be a lawful investment, would likewise render said amendment meaningless, for it would have been necessary to add to said section paragraph H(a-1), since insured mortgages which come within the requirement of paragraph H(a) or H(b) would have been lawful investments without said amendment.

It is well settled that special provisions of a statute, especially when later in point of enactment, operate as exceptions to the general provisions. In the case of *Gas Co. vs. Tiffin*, 59 O. S. 420, the court said:

"It is a settled rule of construction, that special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases, and such cases are governed by the special provisions."

The first branch of the syllabus of the case of *State, ex rel. vs. Connor*, 123 O. S. 310, reads as follows:

"Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions."

See also *Doll vs. Barr*, 58 O. S. 113; *State, ex rel. vs. Brown*, 112 O. S. 590. The legislature apparently felt that insured mortgages, although greater in amount than fifty per cent of the value of the property mortgaged, would be as sound an investment as would uninsured mortgages of an amount of not more than fifty per cent of said value.

It is therefore my opinion that the capital, surplus and accumulations of a domestic life insurance company may be invested in bonds or notes secured by mortgages insured under the provisions of the National Housing Act, even though such mortgages do not comply with the other provisions of Section 9357, General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.