

OPINION NO. 70-067**Syllabus:**

A note that will mature or be redeemable within two years of the date of purchase; that is issued by a corporation for profit which is incorporated under the laws of the United States, a state, or the District of Columbia; and is rated prime by the National Credit Office, Inc. is a legal investment by the Treasurer of State pursuant to the authority of Section 135.14, Revised Code.

To: John D. Herbert, Treasurer of State of Ohio, Columbus, Ohio
By: Paul W. Brown, Attorney General, June 12, 1970

I have your request for my opinion wherein you present the following questions:

- (1). What qualifies as a legal investment by the Treasurer of State in Commercial paper notes as authorized by Section 135.14, Revised Code?
- (2). Is there a limitation as to term of commercial paper notes in which the Treasurer of State may invest?

Section 135.14, Revised Code, provides, in part, as follows:

"The treasurer or governing board may invest or deposit any part or all of the interim moneys, provided that such investments will mature or are redeemable within two years from the date of purchase. The following classifications of obligations shall be eligible for such investment or deposit:

"(A) Bonds, notes, or other obligations of or guaranteed by the United States, or those for which the faith of the United States is pledged for the payment of principal and interest thereon;

"(B) Bonds, notes, debentures, or other obligations or securities issued by any federal government agency, or the export-import bank of Washington;

"(C) Interim deposits in the eligible institutions applying for interim moneys as provided in section 135.08 of the Revised Code. The award of interim deposits shall be made in accordance with section 135.09 of the Revised Code and the treasurer or the governing board shall determine the periods for which such interim deposits are to be made and shall award such interim deposits for such periods, provided, that any eligible institution receiving an interim deposit award may, upon notification that said award has been made, decline to accept said interim deposit in which event the award shall be made as though such institution had not applied for such interim deposit.

"(D) Bonds and other obligations of this state.

"In addition to the investments specified in subparagraphs (A), (B), (C), and (D), of

this section, the treasurer of state may invest interim moneys of the state in commercial paper notes issued by any corporation for profit which is incorporated under the laws of the United States, a state, or the District of Columbia, which such notes are rated prime by the National Credit Office, Inc., New York, or its successor, provided that the aggregate total amount of interim moneys invested in commercial paper at any time shall not exceed fifty million dollars." (Emphasis added)

As can be seen, Section 135.14, supra, imposes three limitations on a commercial paper note that will qualify as a legal investment for the Treasurer of State:

- (1) That it mature or be redeemable within two years of the date of purchase;
- (2) That it be issued by corporation for profit which is incorporated under the laws of the United States, a state, or the District of Columbia;
- (3) That it be rated prime by the National Credit Office, Inc.

A note which satisfies these three requirements is a legal investment by the Treasurer of State pursuant to the authority of Section 135.14, Revised Code.

As I concluded above, in order for a note to be a legal investment it must mature or be redeemable within two years from the date of purchase. This is a general limitation on any investment or deposit of interim moneys. The question occurs, is there an additional time limitation for investment of interim moneys in commercial paper notes. I conclude that aside from any limitation inherent in the practice of National Credit Office, Inc. in rating these notes, there is no additional time limitation.

After receiving your opinion request we inquired of National Credit Office, Inc. whether it had any time limitation inherent in its practice of rating prime commercial paper and were advised that it had such a practice and that it limited the rating "prime" to commercial paper the maturity of which did not exceed 270 days.

It, therefore, appears that although the statute to which references were made contains no limitation as to the term of commercial paper notes in which the Treasurer of State may invest other than the two year limitation, the Treasurer before investing is charged by the same statute with determining whether the item of commercial paper purchased or proposed to be purchased has been rated prime by the designated agency as required by the statute. This conclusion is a factual one.

Clearly, if a specific item were rated prime commercial paper by National Credit Office, Inc. then the notes maturity, more or less than 270 days would not be material.

If National Credit Office, Inc. rates a note prime and it satisfies the other enumerated statutory criteria it is a legal investment pursuant to the other authority of Section 135.14, Revised Code. If National Credit Office, Inc. does not rate a commercial paper note as prime it is not a legal investment pursuant to the authority of Section 135.14, Revised Code, even though it satisfies all the criteria inherent in the practice of National Credit Office, Inc. in rating such notes.

Accordingly, it is my opinion and you are advised that a note that will mature or be redeemable within two years of the date of purchase; that is issued by a corporation for profit which is incorporated under the laws of the United States, a state, or the District of Columbia; and is rated prime by the National Credit Office, Inc. is a legal investment by the Treasurer of State pursuant to the authority of Section 135.14, Revised Code.