Farm Loans, Form of Bonds for.

The form of bonds heretofore approved by this department fully conform with the law, and are fair alike to the mortgagor and the bond holder.

February 29, 1916.

Hon. William Rae,
State Treasurer,
Helena, Montana.

Dear Sir:

I acknowledge receipt of correspondence received by you from Mr. A. D. Stillman, under date of February 24th, 1916, wherein he attacks the forms of bonds and mortgages prepared by this office for use under the provisions of Chapter 28, Laws of 1915, relating to farm loans, and makes request that you approve and use forms which he has submitted for your consideration in lieu of the forms prepared by my predecessor, and approved by me upon succeeding him in office.

I have given the contents of Mr. Stillman's letter, and his forms, careful consideration to the end that I might if possible obtain new ideas or suggestions which would enable this office to better or improve upon the forms which you were instructed to use; and in this connection I desire to assure you that, if, under the law, the forms we have adopted could be altered to avoid the criticisms directed against them by Mr. Stillman, I am sure that you, as I, would be delighted to make the changes, for it is not our object to impede, but our purpose to render operative and workable, if such may be done, the machinery provided for in this measure.

I am now thoroughly convinced that in the main Mr. Stillman's contentions are visionary, and concocted with a deliberate purpose in mind to create imaginary issues, by which he may hope to have our good motives impugned. In any event, it appears they are not advanced in an earnest endeavor to further our joint aim to honorably administer the law. In fact some of his claims manifestly appear to be advanced in bad faith, as the following will show:

In his letter he says on page 1:

> "While I am the representative of the Women of Woodcraft in this matter and submit this interpolation in their behalf,—I have in mind also the interest the farmers of Montana have in the matter. It was in their behalf that I declared some months ago that the Montana Farm Loan Law was good and workable and needed no amendment at this time. In this matter I have consideration for the interests of the farmer borrower as well as the lender,"—

and yet, on page 7, he declares:

> "In order that investors will send their money into the State and accept 5% net on their investment in these farm mortgages, the State of Montana must appear in the bonds as the responsible agent or trustee, within the Statute and Constitutional limitations."

In the form of bond he has submitted, and which he insists conforms to the law, and is the only one he will approve, appear these words:

> "Know all men by these presents, that the State of Montana by and through its Commissioner of Farm Loans for value received promises to pay to bearer".

In the form of bond I have approved, appears these words:

> "Know all men by these presents, that the Commissioner

of Farm Loans of the State of Montana, for value received, hereby undertakes and promises to pay to Bearer."

The law, Section 9, declares:

"Each bond certificate shall have printed upon it a statement to the effect that the principal and interest will be paid at maturity by the Commissioner of Farm Loans of the State of Montana out of funds provided under this act for said purpose."

Mr. Stillman would read into this section of the law "the State of Montana", thus making it the primary obligor. Our Supreme Court has said:

"The purpose of legislation is to prescribe rules to regulate the conduct, and protect and control the rights, of the citizen. Therefore, the rule to be observed in the construction of statutes, is, that the state is not included by general words therein creating a right and providing a remedy for its enforcement. In United States v. Hoar, 2 Mason, 314, Fed. Cas. No. 15, 373, 26 Fed. Cas. 329, Mr. Justice Story said on this subject: "In general, Acts of the legislature are meant to regulate and direct the acts and rights of citizens; and in most cases the reasoning applicable to them applies with very different, and often contrary, force to the government itself. It appears to me, therefore, to be a safe rule founded in the principles of the common law that the general words of a statute ought not to include the government, or affect its right, unless that construction be clear and indisputable upon the text of the Act".

In re Beck's Estate, 44 Mont. 561.

In the foregoing case the Supreme Court denied the right of the state to take a testamentary bequest. However, the general rule announced applies in every case where it is sought to make the state a party.

There is moreover, an insurmountable obstacle to making the state a party to these bonds. The Constitution provides:

"Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation, or grant, by subsidy or otherwise, to any individual, association or corporation."

Art. 13, Sec. 1.

Certainly we must assume the legislature had in mind this section of the Constitution when it enacted the law; for by the plain terms of the law itself, it was never intended to make the state a party, for Section 6 provides in part:

"The Commissioner of Farm Loans shall be named as the mortgagee in trust in the instruments securing said bonds * * * Whenever the Commissioner has approved applications for loans amounting to One Hundred Thousand Dollars in the aggregate, he shall proceed to issue negotiable bonds for a like amount."

In the Beck case, supra, the Supreme Court further said:

"In construing a statute, words are to be taken in their ordinary sense, unless, from a consideration of the whole Act,

it appears that a different meaning was intended."

I have before me a copy of the Constitution of the Women of Woodcraft. Section 120 reads as follows:

> "The investment of any funds of this Association shall be limited to National and State bonds, and to municipal bonds of counties, towns and cities, having an assessed valuation of not less than five hundred thousand dollars; and of school districts having an assessed valuation of not less than two hundred and fifty thousand dollars, as shown by the last preceding assessment roll."

Recalling now, the words of Mr. Stillman's letter: "I am the representative of the Women of Woodcraft in this matter, and submit this interpolation in their behalf", we must assume that as the accredited representative of that Order, he is familiar with its constitution, and particularly with the provisions above quoted, limiting the investment of its funds, to national and *state bonds*, and to municipal bonds of counties, towns, cities and school districts, and that the only theory upon which farm loan bonds may be purchased by the Women of Woodcraft, is that they are state bonds. Yet in his letter to you, he says:

> "The form I attach is within the limits prescribed by the constitution: Executing it, the State does not 'loan its credit': it is within the Statute. Executing it, the State does not itself, engage to pay 'either principal or interest' ".

Taking Mr. Stillman at his word, that under his form the state does not loan its credit, and does not itself engage to pay either principal or interest, we are forced to the conclusion that he is not only insincere in his letter to you, but manifestly stands condemned of a gross breach of faith with his client, the Women of Woodcraft, in that he advocates the investment of their funds in securities bearing the introductory words of his own choosing: "The State of Montana, by and through its Commissioner of Farm Loans, for value received, promises to pay to bearer", when he knows and admits the bonds are not state bonds, nor obligations of the state.

Mr. Stillman says that he represents both the intending purchaser and the farmer; this means he represents both the borrower and the lender, the plaintiff and the defendant. In one breath he insists upon a bond so strong, and with terms so exact and binding, that the investor will receive not only every safe guard the law affords, but others of an assumed and pretended nature; and in the next breath, he complains that certain terms of the mortgage given to secure these bonds exact too much of the farmer.. He complains that the provisions of the bond requiring the borrower to insure and keep insured with an insurance company licensed to do business in this state, any and all buildings or permanent improvements, is obnoxious. Section 6 of the law provides:

> "The Commissioner shall insert in each mortgage all proper safeguards for the preservation of the property pledged as security, and such matter contained in any mortgage shall not effect the negotiable character of the bonds secured by such mortgage."

Insurance clauses are universal in real estate mortgages, and under the mandate of the law, you would not be justified in omitting such a provision.

Some of Mr. Stillman's criticisms appear to border on the rediculous. He says, with reference to the two blank dates provided for in our form:

> "I am wholly unable to guess what use could be made of the blanks for two dates that I have quoted, unless they be used for some purpose of confussion."

Under the terms of the law, an issue of bonds would finally mature in something over twenty-four years from the date of their issue. The first date provided for, is the one when the issue will mature; the second date the one when the particular bond of the series will become redeemable. Thus upon the face of the bond the investor is appraised as to the life of his security, and the amount of interest it will earn. Mr. Stillman, however, in his form, provides that the bond will be paid "on or before..........................years from the date hereof", thus leaving the investor wholly at sea with reference to the actual life of his security. From the language used, the bond might be redeemed at any time after its issue.

Throughout his letter, Mr. Stillman insists that the State should be made a party to these bonds, because the legislature might repeal the law, and thus make the bonds "utterly worthless". Both the Federal and State Constitutions contain specific clauses to the effect that no law shall be passed imparing the obligation of contracts. This means, that if mortgages are given or bonds are issued under the existing law, the machinery of the law must remain in motion until the bonds of that issue are redeemed, and the mortgages given to secure them are satisfied, even though the law be in the meantime repealed.

It seems needless to dwell longer on the subject at hand. You would not be justified in adopting the forms submitted by Mr. Stillman even if his client, the Women of Woodcraft, should purchase the issue contemplated, for the bonds would contain promises impossible of fulfillment. The State would be named as the principal acting through you as Commissioner of Farm Loans. This would be not only illegal, but would operate to make you a party to the practice of pure deception, for Section 26 provides:

> "The State of Montana shall not be liable for the payment of either principal or interest of any of said bonds."

The true theory of the law is that the farmer executing the mortgage is the principal obligor of the bond, and to carry out this aim of the law, you, by its express terms, act as trustee for the parties, and not as the agent of the State; and I hereby reaffirm that the forms I have approved fully conform with the law, and are fair alike to the mortgagor and the bondholder. On the reverse side of the bond there is printed the law in full, to the end that the investor may have it before him as a part of the bond itself, thus insuring against any possible misunderstanding of the purport of the transaction.

Yours very truly,

J. B. POINDEXTER,

Attorney General.