

Insurance Corporations—Investments—Mortgages.

In determining whether certain mortgages are legal investments for insurance corporations of Montana, it must be ascertained whether such mortgages comply with Section 6134, Revised Codes of Montana, 1921, without regard to the fact that the mortgages are guaranteed by a surety company.

C. J. McAllister, Esq.,
Deputy Commissioner of Insurance,
Helena, Montana.

My dear Mr. McAllister:

You have submitted to this office a letter from Stein Bros. & Boyce, of Baltimore, in which they state that the Mortgage Security Corporation of America has succeeded in having the National Surety Company guarantee their mortgages, principal and interest by endorsement as follows:

“For value received, we hereby guarantee the payment of this note, and also the payment of the attached interest coupons as the same fall due, to the holder thereof, without necessity of recourse to the collateral deed of trust or the primary obligator, upon condition that, at our option, we are to be allowed sixty (60) days from date of maturity within which to pay the principal amount, but with interest, in the meantime, at the rate named in this note, should we require this sixty (60) days extension.”

It also appears from said letter that the mortgages are limited to income-producing and residential properties in every case at not over 60 per cent of the independently appraised value, and that the

mortgages originate at present in about ten states. The letter closes with an inquiry as to whether or not this security is legal for investment for insurance companies in Montana.

The authority of insurance corporations organized under the laws of the State of Montana, to invest their funds in securities of the character mentioned in the above inquiry, is defined and limited by Section 6134, R. C. M. 1921, as follows:

"It shall be lawful for any insurance corporation organized under this chapter, or incorporated under any law of this state, to invest its capital and the funds accumulated in the course of its business, or any part thereof, in bonds and mortgages on unencumbered real estate within this state worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company or companies, and the policy or policies transferred to said corporation, and also in stocks of this state, or stocks or treasury notes of the United States, in the stocks and bonds of any county or incorporated city in this state, and to lend the same, or any part thereof, on the security of such stocks, or lands, or treasury notes, or upon bonds and mortgages, as aforesaid, and not otherwise, and to change and reinvest the same in like securities, as occasion may from time to time require; but any surplus money over and above the paid-up capital stock of any such corporation organized under this chapter, or incorporated under any law of this state, may be invested in or loaned upon the pledge of public stocks of the United States, or any of the states, or stocks, bonds, or other evidences of indebtedness of any solvent dividend-paying institution incorporated under the laws of this state or the United States, except their own stock; provided always, that the current market value of such stocks, bonds or other evidences of indebtedness shall be at all times during the continuance of such loans, at least twenty per cent more than the sum loaned thereon."

It will be observed that the above statute makes a distinction between the investment of capital and the funds accumulated in the course of business, and surplus money over and above the paid-up capital stock, and permits their investment as follows:

CAPITAL AND FUNDS ACCUMULATED IN THE COURSE OF BUSINESS.

1. In bonds and mortgages on unencumbered real estate within this state worth double the sum loaned, exclusive of buildings, unless such buildings are insured.
2. In stocks and bonds of this state.
3. In stocks or treasury notes of the United States.
4. In stocks and bonds of any county or incorporated city in this state.

SURPLUS MONEY OVER AND ABOVE PAID-UP
CAPITAL STOCK.

1. In public stocks of the United States, or any of the states.
2. In stocks, bonds, or other evidences of indebtedness of any solvent dividend-paying institution incorporated under the laws of this state or the United States, except their own stock.

Insurance corporations of this state can only invest their capital and funds accumulated in the course of business in bonds and mortgages when they are upon unencumbered real estate situate within Montana. If any of the mortgages of the Mortgage Security Corporation of America meet this requirement, and the further condition that the real estate is worth double the sum loaned, exclusive of buildings, unless such buildings are insured in some responsible company or companies, and the policy or policies are transferred to said insurance corporations, said corporations may invest in them their capital and funds accumulated in the course of business. Otherwise they may not.

Insurance corporations of this state can only invest their surplus money over and above paid-up capital stock in bonds and other evidences of indebtedness of solvent dividend-paying institutions when the said institutions are incorporated under the laws of Montana or of the United States. If any of the mortgages of the Mortgage Security Corporation of America meet this requirement, insurance companies of this state may invest in them their surplus money over and above paid-up capital stock. Otherwise they may not.

The fact that the mortgages are guaranteed by the endorsement of the National Surety Company does not add to their legal status as an investment so far as the above statute is concerned, and while the endorsement may make the mortgages an unusually sound and attractive investment, insurance corporations of this state may invest their funds only in the manner prescribed by statute, and there is nothing in our law which permits a waiver of the conditions set forth in Section 6134, R. C. M. 1921, when the evidence of indebtedness is secured by the guarantee of a surety company.

It is, therefore, my opinion that in determining whether or not the mortgages of the Mortgage Security Corporation of America are legal investments for insurance corporations of this state, it must be ascertained whether or not they comply with Section 6134, R. C. M. 1921, without regard to the fact that they are guaranteed by the endorsement of the surety company hereinbefore set forth.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.