

**Bonds — Counties — Cities and Towns — Depositories —
County Funds—Collateral—Foreclosure—Purchase—Invest-
ment.**

Counties, cities and towns holding bonds of corporations quoted on the New York market as collateral to funds deposited in banks that have suspended business can only become the purchaser of these bonds through foreclosure of the right of redemption by judicial sale if the court authorizes the purchase thereof. This right would be restricted to those cases in which the market value of the securities was not bid by any other purchaser. If purchased the county, city or town should immediately dispose of them at the market value. Such bonds are not a proper investment for sinking funds.

Mr. George M. Robertson,
State Bank Examiner,
Helena, Montana.

March 18, 1931.

My dear Mr. Robertson:

You inquire whether counties, cities and towns holding bonds of corporations quoted on the New York market as collateral to funds deposited in banks which have suspended business may foreclose on the collateral so held and buy it in themselves for investment purposes in those cases where there is no immediate need of the funds which said bonds secure.

The depository act does not provide for any method of procedure to be followed in case it is necessary to resort to the collateral securities to secure repayment of the funds deposited in banks. The collateral securities deposited to secure repayment of these funds is a pledge and the procedure to foreclose would be governed by sections 8292 to 8317, R. C. M. 1921. Section 8312 permits the sale by the pledgee of obligations of corporations but section 8316 prohibits the pledgee from purchasing the property pledged at a sale held by the pledgee. The only way that the county or city, as the case may be, might become the purchaser of these bonds would be through the foreclosure of the right of redemption by a judicial sale as provided in section 8317, in which case the court could authorize the pledgee to purchase the bonds.

This right of purchase, however, would, in my opinion, be restricted to those cases in which the market value of the securities was not bid

by any other purchaser. These bonds are quoted on the New York market and therefore their market value can be readily ascertained. The purpose of taking the collateral for the security of these deposited public funds is to keep the funds secure and liquid. If some other person at such a sale bid the market value of the bonds the county or city should not bid a higher amount as that would be in excess of the value of the bonds and, of course, there would be no reason to bid more than the value unless the county or city contemplated holding the bonds until they increased in value. This would, of course, render the purchase an investment or speculation which the county and city is not authorized to do except in the case of sinking funds and then only in a certain class of securities designated in the law in which the bonds of private corporations are not included.

The purchase, therefore, of these securities to be held by the county or city as an investment would be forbidden by the fact that a large part of the funds deposited are not sinking funds and cannot be invested in any kind of securities, and for the further reason that even if these deposited funds could be invested the law does not permit their investment in the bonds of private corporations such as are the bonds mentioned in your inquiry. Should the county or city become the purchaser of the bonds at a judicial sale due to the fact that no other person bid the market value thereof it would be necessary for the county or city to at once dispose of the bonds so purchased at the market value so that the funds would be available for use for their original purposes, and the county or city would not be permitted to retain the said bonds for investment purposes.

Very truly yours,
L. A. FOOT,
Attorney General.