

**Opinion No. 60****Farm Ownership Loans Not  
Authorized Investment of Montana  
Trust and Legacy Fund—  
Proper Investments for Long Term  
Investment Fund**

HELD: 1. Funds which are administered by the State Board of Land Commissioners as parts of the Montana Trust and Legacy fund including the permanent school funds may not be invested in farm ownership loans.

2. The State Board of Land Commissioners may invest moneys in the long term investment fund as enumerated in Chapter 176, Laws of 1953, in insured farm ownership loans.

February 15, 1956

Mr. Lou E. Bretzke, Commissioner  
State Lands and Investments  
State Capitol Building  
Helena, Montana

Dear Mr. Bretzke:

You have requested my opinion as to whether the state board of land commissioners may purchase insured farm loans with moneys of the public school permanent fund and other permanent funds of the educational, charitable and penal institutions of the state. You submitted with your letter an instrument which illustrates the type of the loan. This is in the form of a promissory note to be executed by the owner of the farm and has on its back an insurance endorsement to be signed by an officer of the Farmers Home Administration.

There are two types of loans which are offered to private lenders. The first type is farm ownership loans authorized by the Bankhead-Jones Farm Tenant Act, as amended, (7 U.S.C. 1000 et seq.) and Soil and Water conservation loans authorized by the Act of August 28, 1937, as amended by Public Law 597, 83d Congress (16 U.S.C. 590r-590x-3). The loans in question are insured under an act of Congress which creates a farm tenant mortgage insurance fund to be used by the secretary of agriculture as a revolving fund for carrying out the insurance plan. The Act of August 28, 1937, as amended, pledges the full faith and credit of the United States of America to the payment of the loan. However, the lender must look to the insurance fund for the repayment of the loan if there is a default.

Under Section 6 of Article XXI of the Montana Constitution, "the public school permanent fund, the other permanent funds originating in land grants from the United States for the support of higher institutions of

learning, and for other state institutions, subject to investment, shall be invested as parts of the Montana trust and legacy fund." Section 8 of Article XXI, limits the investment of the fund to Montana school district, county and municipal bonds, bonds of the State of Montana, United States bonds fully guaranteed by the United States as to principal and interest and also federal land-bank bonds. This constitutional provision also authorizes the legislative assembly to provide additional regulations and limitations. In conformity with this power, the Montana legislature enacted Section 81-100 R.C.M., 1947, which permits the investment of such permanent funds subject to the administration of the land board under Article XXI in general obligation bonds of Montana school districts, counties, and cities, Montana and United States bonds, capitol building bonds, federal land-bank bonds, and general fund warrants of the state and counties, and also the poor fund, road fund, and bridge fund warrants of the counties.

As the above cited constitutional provision and statute authorize investments in United States bonds, it is necessary to consider the distinction between insured loans to individuals and bonds of the United States. In *First State Bank of Kansas City v. Bone*, 122 Kan. 493, 252 Pac. 250, the court gave the following definition:

"A bond, as the term is here used, whether issued by the United States government, the state, or some governmental subdivision thereof, or by a private corporation, a partnership, or an individual, is a written instrument which includes within its terms the promise by the maker to pay to bearer, or to a person named or designated therein, or his order, a named sum of money, usually with interest at a named rate, at a fixed or determinable future time. . . ."

As the United States government is not the primary obligor of the notes and is not the maker of the notes, it is apparent that the loans to individual farmers are not to be construed as bonds of the United States.

However, the state board of land commissioners, under Chapter 176, Laws of 1953, has the power to invest funds of the retirement systems including the Montana Highway Patrolmen's Retirement Fund, the Public Employees' Retirement Fund, the Teachers Retirement Fund, and other designated funds in the long term investment fund. Under subsection (a) of Section 8, Chapter 176, Laws of 1953, moneys in the long term investment fund may be invested:

"In or upon securities which are direct obligations of the United States government; securities which are guaranteed as to principal and interest by the United States government; securities issued by instrumentalities of the United States government."

Insured farm ownership loans are securities which come within the above classification.

It is therefore my opinion that all funds which are administered by the State Board of Land Commissioners as parts of the Montana Trust and Legacy fund including the permanent school funds may not be invested in farm ownership loans.

It is also my opinion that the State Board of Land Commissioners may invest moneys in the long term investment fund as enumerated in Chapter 176, Laws of 1953, in insured farm ownership loans.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.