primary election governed by the laws concerning primary elections in cities.

It is my further opinion that if the county commissioners have created the precinct boundaries within such a town so that one or more of said precincts lie partly outside said town, the selection of nominees by the two largest political parties must be done by separate conventions, and, pursuant to Burns' 29-4405, supra, the town chairman of each of the two political parties casting the highest and next highest number of votes in the last general election must issue a call for the convention.

OFFICIAL OPINION NO. 60
December 11, 1958

Mr. Joe McCord, Director
Department of Financial Institutions
410 State House
Indianapolis 4, Indiana

Dear Mr. McCord:

I am in receipt of your recent letter requesting my Official Opinion concerning the following:

"This department has been contacted recently with respect to the eligibility of state office building revenue debentures for investment by banks and trust companies, building and loan associations, industrial loan and investment companies, credit unions and fiduciaries.

"It appears that Banks and Trust Companies Regulation No. 9, pertaining to investment securities by banks and trust companies, may be sufficiently broad to permit the investment by banks and trust companies in such securities. A copy of this regulation is attached to this letter and we wish to call your attention to the provisions of Section 2 (a).

"We have no regulation pertaining to investments by state chartered building and loan associations, industrial loan and investment companies, credit unions or fiduciaries. The eligibility of the state office building..."
revenue debentures for investment by these institutions or fiduciaries appears to be questionable and we would appreciate having an official opinion from your office as to their eligibility for investment by banks and trust companies, building and loan associations, industrial loan [and] investment companies, credit unions and fiduciaries."

As a prelude to the consideration of this overall problem, it is appropriate to reiterate the purpose of the Department of Financial Institutions and of statutes governing the institutions under the jurisdiction of that department. Through the exercise of the powers granted said department in the administration of such statutes, that department is intended to so regulate said institutions for the purpose of establishing and maintaining such in a sound financial condition and to further maintain requirements as to the liquidity of such portion of their assets to permit them to serve the community in and for which they are established.

Since the protection of those persons having a financial interest in the institution and the availability of the services of the institution to those entitled thereto are among the prime goals of regulation, statutes concerning the investment of the funds of such institutions are to be considered as restrictive.

Likewise, with respect to statutes regulating the investment of funds held by fiduciaries, their purpose is the protection of the funds for those having a financial interest therein, i.e. the beneficiaries.

With respect to both financial institutions and fiduciaries generally, the Legislature has recognized the trust character of the funds handled by such by enacting statutes intended both to safeguard the funds so entrusted and to assure their availability when needed.

By way of background, the State Office Building Commission has been given specific statutory authorization to issue and sell interest bearing State Office Building revenue debentures and the Acts of 1953, Ch. 221, Sec. 14, as amended, as found in Burns' (1957 Supp.), Section 60-2114, provides, in part, as follows:

250
"The debentures issued under the provisions of this act shall constitute only the corporate obligations of said commission payable solely and only from and secured exclusively by pledge of the income and revenue of the state office building remaining after payment or provisions for payment of the expenses of operation, maintenance and repair of said building to the extent such expenses of operation, maintenance and repair are not otherwise provided, and it shall be plainly stated on the face of each such debenture that same does not constitute an indebtedness of the state of Indiana within the meaning or application of any constitutional provision or limitation but that it is payable solely and only as to both principal and interest from the net revenues of said state office building. * * *" (Our emphasis)

The Supreme Court of Indiana determined in its decision in Book v. State Office Building Comm. (1958), — Ind. —, 149 N. E. (2d) 273, that the State Office Building Commission is a separate corporate body created as an instrumentality of the State for a public purpose. That court also determined that the debentures which the commission shall issue, which shall constitute only the corporate obligations of the commission and which are payable solely and only from and secured exclusively by pledge of the income and revenue of the state office building, would not constitute a debt of the State within the meaning of the constitutional provision which states that no law shall authorize any debt to be contracted on behalf of the State. The court stated on page 284 that "Purchasers of debentures or bonds issued by the Commission take them subject to all of the provisions of the statute. Under its provisions bondholders, in case of default, have no recourse against the State of Indiana in its corporate sovereign capacity, or against any State fund." The revenue bonds are not obligations of the State, but only of the State Office Building Commission.

Your letter specifically asks whether four different types of financial institutions are authorized to invest in State Office Building revenue debentures; also, whether fiduciaries are authorized to make such investments.

In certain statutory provisions hereinafter referred to and
OPINION 60

quoted, the term "marketable obligations" is used, and before proceeding with a detailed discussion it should be stated that I am neither assuming nor deciding that the State Office Building debentures are "marketable obligations" as required in the quoted statutes.

I have divided my reply into five sections.

1. Banks and Trust Companies

The Acts of 1933, Ch. 40, Sec. 173, as amended, as found in Burns' (1950 Repl.), Section 18-1104, contain the pertinent provisions in this respect with regard to investments by banks and trust companies. It provides as follows:

"Except as hereinafter otherwise provided, the business of dealing in investment securities by any bank or trust company shall be limited to purchasing and selling such securities without recourse, solely upon the order, and for the account of, customers, and in no event, for its own account, and no bank or trust company shall underwrite or guarantee all or any part of any issue of securities. Any bank or trust company may purchase, for its own account, and sell, investment securities, under such limitations and restrictions as the department may, by regulation, prescribe, but in no event, shall the total amount of the investment securities of any one obligator or maker, purchased or held by any bank or trust company for its own account, exceed at any time ten [10] per cent of the amount of the sound capital of such bank or trust company. As used in this section, the term 'investment securities' shall mean marketable obligations evidencing indebtedness of any person, firm or corporation in the form of bonds, notes and/or debentures commonly known as 'Investment Securities,' and such further definition of the term 'investment securities' as may be prescribed by the department, but the limitations imposed by this section shall not apply to the direct or indirect obligations of the United States or the direct obligations of any territory or insular possession thereof or of the state of Indiana or any municipal corporation or taxing district thereof. Except as in this act otherwise provided or otherwise permitted by law,
nothing herein contained shall authorize the purchase by any bank or trust company of any share of stock of any corporation, unless such purchase shall be necessary to prevent loss under a debt previously contracted in good faith; and stock so purchased or acquired shall, within six [6] months from the time of its purchase, be sold or disposed of at public or private sale, unless otherwise ordered by the department.” (Our emphasis)

As heretofore noted, these debentures are not obligations of the State of Indiana, and, therefore, would not automatically be eligible investments for banks and trust companies on the basis of their being direct obligations of the State of Indiana, as provided in the above exclusion. Notwithstanding this evident conclusion, these State Office Building revenue debentures may qualify for investment by banks and trust companies under the conditions hereinafter stated. It should be noted from the above statutory provision that, under such limitations and restrictions as the Department of Financial Institutions may prescribe by regulation, any bank or trust company may invest in marketable obligations evidencing indebtedness of any corporation in the form of debentures.

As heretofore noted, the State Office Building Commission is “a separate corporate body created as an instrumentality of the State for a public purpose, but it cannot be considered as the State of Indiana in its corporate sovereign capacity.” Book v. State Office Building Comm., supra. The term “corporate body” or “body corporate” has been held to mean a corporation, either public or private, and is particularly applicable to a public corporation having powers and duties of government or for the performance of a public function:

See Utah State Building Comm. v. Great American Indemnity Co. (1943), 140 Pac. (2d) 763, 766, 767;


Therefore, the State Office Building revenue debentures are properly classified as being debentures of a corporation, thereby eligible for investment by banks and trust companies under such limitations and restrictions as your department may pre-
scribe by regulation. As mentioned in your letter requesting this Opinion, the Department of Financial Institutions has adopted and promulgated Regulation No. 9, applicable to banks and trust companies and germane to this problem, which, in part, provides as follows:

"SECTION 1.

"The purchase by any bank or trust company for its own account of any bond, note or evidence of indebtedness of the kind commonly designated as a security, which is speculative in character or which has speculative characteristics, is hereby declared by the Department to be an unsafe manner for the transaction of business by any such bank or trust company; and no bank or trust company shall purchase for its own account any such bond, note or evidence of indebtedness, except as specifically authorized by statutory provision. A security shall be classified as speculative for the purpose of this section, (a) which is rated below the first three rating classes by two or more of the generally recognized security rating services at the time of purchase, or (b) which is in default at time of purchase. The provisions of this section shall not affect any of the statutory limitations or exceptions as provided in Section 173 of The Indiana Financial Institutions Act as amended.

"SECTION 2.

"For the purpose of valuation by the Department, securities shall be classified into four groups, as follows:

"(a) Group One, which shall consist of all securities rated in the first three classes by two of the recognized rating agencies and such other securities as in the judgment of the examiner are of equivalent quality;" (Our emphasis)

Pursuant to this regulation, these revenue debentures would qualify for investment by banks and trust companies (a) if they are rated in the first three classes by two of the recognized rating agencies or (b) if the examiner accepts them as being of quality equivalent to such securities as are rated in the first three classes by two recognized rating agencies.

254
1958 O. A. G.

It should further be noted that, in the statutory provision hereinbefore quoted respecting the eligibility of securities for investment by banks and trust companies, your department has the power to adopt "such further definition of the term 'investment securities' as may by regulation be prescribed by the department * * *." In other words, by regulation the Department of Financial Institutions could specifically provide, by definition, that the State Office Building revenue debentures be "investment securities" eligible for investment by banks and trust companies under its jurisdiction.

Therefore, in conclusion to this portion of the Opinion respecting banks and trust companies, it is my opinion that the State Office Building revenue debentures *may* be eligible investments for banks and trust companies under any one of the following three conditions:

(a) If they are rated in the first three classes by two of the recognized rating agencies; or

(b) If they are adjudged by the examiner as being of quality equivalent to securities rated in the first three classes by two of the recognized rating agencies; or,

(c) If the Department of Financial Institutions by regulation specifically defines the debentures of the State Office Building Commission as being "investment securities," thereby eligible for investment by banks and trust companies. (Eligibility of these debentures for investment by banks and trust companies when acting in a fiduciary capacity is considered later in this Opinion.)

2. Building and Loan Associations

Investments by building and loan associations are primarily governed by the provisions of Acts of 1933, Ch. 40, Sec. 273, as amended, as found in Burns' (1957 Supp.), Section 18-2123. However, the State Office Building revenue debentures are not includable within any of the classifications of investments permitted by that section. The Acts of 1933, Ch. 40, Sec. 274, as amended, as found in Burns' (1950 Repl.), Section 18-2124, provides for investment of excess funds by building and loan associations and reads in part as follows:
“If at any time any association has funds in excess of the amounts required for loans to its members and the payment of matured shares, and the withdrawal demands of its shareholders, the association may invest such excess funds as follows:

“(a) In bonds, notes, certificates and other valid obligations of the United States or of the state of Indiana, or any county, township, city, town or other political subdivision of the state, issued pursuant to authority of law.”

It should be pointed out again that State Office Building revenue debentures are not obligations of the State, but only of the State Office Building Commission. In interpreting a similar statute, another Attorney General stated in 1936 O. A. G., page 353, at page 356 that “I may say in this connection that the term bonds, notes and certificates which are the ‘obligations of any state,’ refers to legal obligations and is not satisfied by the existence of a moral obligation.”

A careful reading of the above quoted section makes it clear that State Office Building revenue debentures do not fall within the description as set out in that section, and they therefore could not be eligible for investment of excess funds by a building and loan association.

3. Industrial Loan and Investment Companies

The types of investments which may be made by industrial loan and investment companies are governed by the provisions of Acts of 1935, Ch. 181, Sec. 6, as amended, as found in Burns’ (1957 Supp.), Section 18-3106. That section provides that every such company shall possess and may exercise the following pertinent powers:

“(d) To invest in bonds, notes or certificates which are: the direct or indirect obligations of the United States, or of the state of Indiana; * * *

“(e) To invest in bonds, notes or debentures rated in one of the first three classifications established by one or more standard rating services to be specified by the department, which satisfy such requirements of marketability as may be prescribed from time to time by the department, which are the obligations of any
person, firm or corporation, or any other state, territory or insular possession of the United States, or of any county, township, town, city, taxing district, or municipality thereof which is not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted within the five [5] year period immediately preceding the purchase of such securities; and such other investment securities as may by regulation be prescribed by the department. As used in this section the term 'investment securities' shall mean marketable obligations evidencing indebtedness of any person, firm or corporation in the form of bonds, notes and/or debentures commonly known as 'investment securities' and such further definition of the term 'investment securities' as may by regulation be prescribed by the department.

* * *

The State Office Building revenue debentures do not come within the class of investments described in subsection (d), nor are they obligations of a corporation which is “not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted within the five [5] year period immediately preceding the purchase of such securities,” as provided in the first part of subsection (e). However, under subsection (e) the department is given the authority by regulation to determine such other investment securities that will be proper investments for industrial loan and investment companies. Your letter states that your department does not have such a regulation at this time. Until such a regulation is adopted, the debentures in question will not be proper investments for industrial loan and investment companies under the present statutes.

4. Credit Unions

The Acts of 1933, Ch. 40, Sec. 303, as amended, as found in Burns' (1957 Supp.), Section 18-2208, states that, among other things, credit unions shall have the following powers:

“(c) To invest, through its board of directors, in any of the securities prescribed in subsections (a), (b), (c), (d), (e), and (h) of section 1 of chapter 297, Acts of 1947 * * *
“(d) * * * The funds of the credit union shall in all cases be used first for loans to its members, and preference shall be given to the smaller loans in the event that the available funds do not permit all loans, which have passed the credit committee, to be made.”

The 1947 Act referred to above (commonly known as the Trust Investments Act) has been amended, although not materially, and now appears in Burns' (1957 Supp.), Section 31-501. It sets out the investments which may be made by individuals and banks or trust companies when acting in a fiduciary capacity without order of court. Subsection (a) provides such funds may be invested in:

“(a) Bonds, notes or certificates which are the direct or indirect obligations of the United States, or of the state of Indiana; or the direct obligations of any county, township, city, town or other taxing district or municipality or instrumentality of the state of Indiana, which district, municipality or instrumentality is not then in default in the payment of either principal or interest on any of its funded obligations and has not so defaulted for a period of more than six [6] months within the five [5] year period immediately preceding the purchase of such securities.”

The State Office Building revenue debentures do not fall within this category since they are not obligations of the State, nor are they being issued by a state instrumentality which meets the default requirements.

Subsection (b) of Burns' 31-501, supra, authorizes investment in certain obligations of other states. Subsection (c) concerns investments secured by first mortgages. Subsection (d) permits investments in certain rated bonds, notes, or debentures, “which satisfy such requirements of marketability as may be prescribed from time to time by the department, which are the obligations of a corporation not then in default in the payment of either principal or interest on any of its funded obligations and which has not so defaulted within the five [5] year period immediately preceding the purchase of such securities.” Subsection (e) provides for investment in bonds or debentures issued under specific federal acts. Credit
unions are also permitted, by subsection (h), to invest in participating interests in certain common trust funds.

Since a credit union can only invest in those types of securities set out above, and since State Office Building revenue debentures do not come within any of the described investments, credit unions cannot invest in State Office Building revenue debentures under the present statutory limitations.

5. **Fiduciaries**

Some of the provisions concerning investments which may be made by individuals and bank and trust companies when acting as fiduciaries under the terms of Burns’ 31-501, *supra*, have already been discussed. In addition to those authorized investments already set out, fiduciaries are permitted to invest in certain common and preferred stocks of private corporations under Burns’ 31-501 (f) and (g), *supra*, and in shares of certain savings and loan or building and loan associations under subsection (1). Other investments are also authorized by the following subsections of Burns’ 31-501, *supra*:

“(i) Any other property, real or personal, which the fiduciary is authorized or directed to hold or purchase by the terms of the instrument creating the trust.

“(j) Any other property, real or personal, which the fiduciary is specifically authorized or directed to purchase by the written consent of each beneficiary of the trust, where all such beneficiaries are competent and such authorization or direction is not contrary to the terms of the instrument creating the trust.

“(k) Any other property, real or personal, which the fiduciary is specifically authorized or directed to purchase by the court having jurisdiction of the estate or fund after a petition to invest funds has been filed, notice thereof given as next herein provided and a hearing held on said petition. * * *” (Our emphasis)

Acts of 1941, Ch. 149, Sec. 1, as found in Burns’ (1949 Repl.), Section 31-115, also sets out investments which are proper for executors, administrators, guardians, trustees and other fiduciaries to make, but State Office Building revenue debentures do not come within any such classes.
Thus it can be seen that State Office Building revenue debentures are not eligible investments for fiduciaries unless such debentures are authorized by the terms of the trust as an investment, or are directed to be purchased by the trust beneficiaries, or are specifically authorized or directed to be purchased by the court of proper jurisdiction, as provided by Burns’ 31-501, subsection (i), (j), and (k), supra.

Reference is again made to Book v. State Office Building Comm., supra, for the reason that there the Indiana Supreme Court determined State Office Building debentures have the same status as toll road bonds, inasmuch as both are obligations of only the corporate instrumentalities issuing them, and not obligations of the State itself.

It is to be noted that in 1953, the Legislature then apparently recognized that the statutes generally referred to herein did not authorize investment of many types of funds in toll road bonds, and this situation was specifically rectified with respect only to toll road bonds by the Acts of 1953, Ch. 131, as found in Burns’ (1957 Supp.), Sections 36-3223 to 36-3225, which provide as follows:

36-3223. “Every financial institution, insurance company and trust fund, in addition to the investments now authorized by law, is hereby authorized and empowered to invest any of its funds, of any kind or character in any toll road revenue bonds of the state issued by the Indiana toll road commission pursuant to chapter 281 of the acts of the Indiana General Assembly for the year 1951, and acts amendatory thereof and supplemental thereto, and such bonds are hereby declared eligible for deposit by any financial institution, insurance company or trust fund under any law of this state providing for the deposit of securities or funds.”

36-3224. “‘Financial institutions’ as used herein means and includes any bank and/or trust company, building and loan association, credit union, bank of discount and deposit, savings bank, private bank, loan and trust and safe deposit company, trust company, rural loan and savings association, guaranty loan and savings association, mortgage guaranty company, and
small loan company organized under any law of the state of Indiana.

"'Insurance company' as used herein means and includes any stock, mutual, reciprocal, assessment or fraternal benefit company or society writing any life, fire, livestock, casualty, health, hospital, accident or bonding insurance or re-insurance, which company or society is organized under the laws of the state of Indiana.

"'Trust fund' as used herein shall be limited to private trust funds."

36-3225. "This act shall be liberally construed to effectuate the purpose of permitting investment in any such toll road bonds of this state and shall be construed as giving additional power and authority to every financial institution, insurance company and trust fund to make such investments and for such investments to be eligible for deposit under law of this state, existing restrictions in any laws of this state to the contrary notwithstanding; Provided, however that nothing contained herein shall be construed to change any limitations as to amounts which may be invested in obligations of any one obligor as may be imposed by laws regulating the investments of various financial institutions, insurance companies, and trust funds."

The basic statutes governing the investment powers of financial institutions as herein discussed, which were not broad enough originally to authorize investments in toll road bonds, have not been amended in the interim to permit investments now in other bonds of a similar nature. There is no act substantially similar to the Acts of 1953, Ch. 131, supra (dealing with toll road bonds) by which authority is granted for investing in debentures of the State Office Building Commission, nor has said 1953 Act been amended to include such investments within the authority therein granted.

It is, therefore, my opinion that State Office Building revenue debentures are proper investments for banks and trust companies under any of the three conditions set forth earlier in this Opinion. However, such debentures are not eligible for
investment by building and loan associations, industrial loan and investment companies or credit unions under the present statutes and regulations. Such State Office Building revenue debentures are legal investments for fiduciaries *only* if investment in such revenue debentures is authorized by the terms of the trust, or by the trust beneficiaries or by the proper court, as previously stated in this Opinion.

**OFFICIAL OPINION NO. 61**

December 15, 1958

Hon. John W. Donaldson  
State Representative  
309 Boone County Bank Building  
Lebanon, Indiana

Dear Representative Donaldson:

This is in response to your letter concerning 4-H club associations, in which you request my Official Opinion, which letter reads in part as follows:

"Whether or not a 4-H club association which is incorporated under 'The Indiana General Not For Profit Corporation Act,' as amended, can borrow money and/or issue bonds for the purpose of constructing a building on real estate leased to the corporation during the period of a tax levy for five years granted by the Board of County Commissioners and then use the annual tax derived therefrom to repay the loan and/or bond issue.

"An appropriation was granted by the Commissioners under the provisions of Burns' Indiana Statutes, Sec. 15-315. There are three years to go on the five year period.

"The real estate was leased to the corporation under the provisions of Burns' Indiana Statutes, Sec. 26-620 for a period of 99 years."

The problem resolves itself into two basic questions, and will be answered accordingly.