

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Revenue bonds, eligibility of same for investment by banks and trust companies. Trust funds.

May 6, 1937.

Hon. E. H. DeHority,
Bank Supervisor,
Department of Financial Institutions,
State House,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official opinion with respect to the eligibility for investment by banks and trust companies under section 18 of chapter 33 of the Acts of 1937 of "revenue bonds" issued by municipalities for the purpose of financing the cost of municipally owned utilities or extensions and improvements thereof, referring to the investment by such banks or trust company of their own funds.

"Revenue bonds" as I understand the term to be used in your request, means bonds issued by governmental units which are payable only out of a certain fixed per cent of the gross revenues of municipally owned utilities. They are not obligations of the municipality issuing them and the several statutes under which they are issued usually require such a statement to be included as a part of the bond.

With this preliminary observation, I desire now to call attention to section 18, *supra*, which 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 obligor or maker, purchased or held by any bank or trust company for its own account, exceed at any time 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 by regulation 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 months from the time of its purchase, be sold or disposed of at public or private sale, unless otherwise ordered by the department." (Our italics and capitals.)

Acts of 1937, page 189.

It will be noted that the subject of the above section could very well be stated as "*dealing in investment securities by banks and trust companies.*" The first sentence of the section limits such institutions in their dealings in such securities to dealings *upon the order of and for the account of their customers*, EXCEPT AS THEREAFTER SET OUT.

It becomes important, therefore, in determining what a bank or trust company may do for its own account in dealing in investment securities to ascertain what these exceptions are. They are, as set out clearly in the statute:

1. That such investments are subject to such limitations and restrictions as the department may by regulation prescribe; and
2. That, in no event, shall the total amount of the investment securities of any one obligor or maker

purchased or held by any bank or trust company for its own account exceed at any time 10 per cent of the amount of the sound capital of such bank or trust company.

The foregoing limitations do not apply, however, to:

(a) The direct or indirect obligations of the United States.

(b) The direct obligations of any territory or insular possession thereof or of the State of Indiana or any municipal corporation or taxing district thereof.

“Revenue bonds” such as you describe, however, are not the obligations of the United States nor the *direct* obligations of the State of Indiana or of any municipal corporation or taxing district thereof, so that, in any event, their eligibility for investment by such bank or trust company for its own account would be subject to the limitations set out in subparagraphs 1 and 2 *supra*.

Thus far I have considered the matter upon the assumption that such “revenue bonds” are “investment securities” within the meaning of that term as used in the section of the Act under consideration. I now desire to call your attention to the definition of the term “investment securities” as expressed in said section. Note the following:

“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,” * * * (Our italics and capitals.)

Ordinarily the word “corporation” as used in statutes, unless otherwise indicated, means a private corporation and does not include a municipal corporation. *Wallace v. Lawyer*, 54 Ind. 501; *Township of East Oakland v. Skinner*, 94 U. S. 255; *Donahue v. City of Newburyport (Mass.)*, 98 N. E. 1081. For that reason, under the definition of “investment securities” as set out in the above section, I do not think there is any provision in said section authorizing banks or

trust companies to invest in "revenue bonds" for their own account, unless the definition shall be enlarged by regulation of the department, for which there seems to be some authority. If the definition of "investment securities" is thus enlarged so as to include "revenue bonds," their purchase would, nevertheless, be subject to the limitations set out in sub-paragraphs 1 and 2 *supra*.

You inquire also as to whether such bonds are eligible for the investment by banks and trust companies of money held by them in a fiduciary capacity, referring in this connection to section 20 of chapter 33 of the Acts of 1937.

Section 20 of chapter 33 of the Acts of 1937 relates to the authority of banks and trust companies in the investment of money held by them in a fiduciary capacity. The section is quite long and I do not think it is necessary to set it out in its entirety. I think it is clear from a reading of the section that "revenue bonds" are not included in subdivisions (a) to (f) inclusive of said section. Subdivisions (g), (h) and (i) of said section provide as follows:

"(g) 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.

"(h) 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.

"(i) 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 filed and notice of the time and place of the hearing thereon given as in civil actions to each beneficiary of the trust then in life; but such notice may be waived by any competent beneficiary."

Acts of 1937, pp. 193-194.

It is apparent that "revenue bonds" might become eligible for investment of trust funds under the conditions set out in the above quoted subdivisions of the section.

You inquire also as to whether such "revenue bonds" are eligible for investment of savings banks under section 1 of chapter 27 of the Acts of 1937. Without copying the section in its entirety in this opinion, I desire to say that my examination of it discloses that the only provisions which could possibly authorize such an investment is contained in subdivision indicated as "Second," which reads as follows:

"It shall be lawful for the trustees of any savings bank to invest the money therein only as follows, to wit: * * *

"Second. In bonds, notes, certificates or orders of the State of Indiana, or of any county, township, city, town, political subdivision, instrumentality or agency thereof issued pursuant to authority of law, which is not then in default in the payment of either principal or interest on any of its obligations, and has not so defaulted within five years immediately preceding the purchase of such securities."

As already pointed out, these "revenue bonds" are not the bonds of the State of Indiana or of any county, township, city, town, political subdivision, instrumentality or agency thereof in the sense that they are the *obligations* of such units, which, I think, the above quoted provision requires as a condition of eligibility. In my opinion, therefore, section 1 of chapter 27 of the Acts of 1937 does not authorize savings banks to invest their funds in "revenue bonds" as that term is herein defined.

CONSERVATION, DIVISION OF: Abstract of title; purchase of real estate for park purposes in Porter County.

May 7, 1937.

Hon. Myron L. Rees, Director,
 Division of Lands and Water,
 Conservation Department,
 Indianapolis, Indiana.

Dear Sir:

Reference is made to your letter of May 3, 1937, forwarding abstracts of title numbered 1 to 18 inclusive, covering real estate which your department is proposing to purchase. You also forward the several unofficial opinions of the At-