1965 O. A. G.

All rules and regulations must be reasonable and within the purview of the Act and they may not deny what the Legislature said the teacher is entitled to. A decision as to what is the "personal business and/or the conduct of personal or civic affairs," should be left to the subjective determination of each teacher.

OFFICIAL OPINION NO. 66

November 23, 1965

Mr. Donald H. Sauer, Director
Department of Financial Institutions
1024 State Office Building
Indianapolis, Indiana

Dear Mr. Sauer:

This is in response to a request for an Official Opinion by your predecessor, Mr. Joe McCord, in answer to the following question:

"May a State chartered building and loan association invest the funds received by it in the 100% repurchase guaranty vendee accounts for sale to investors by the Veterans Administration?"

From information received from the Veterans Administration Regional Office in Indianapolis, Indiana, it appears that most of the so-called vendee accounts are in the form of real estate contracts which are available for sale to investors with a 100% repurchase guaranty by the Veterans Administration. In the selling of such accounts, the Veterans Administration would handle these transactions by one of three procedures:

1. Conversion of the contract to a mortgage by the VA and the assignment of mortgage, note and other instrument to the investor.

2. Assign the contract and deed the property to the investor.

3. Assign the contract to the investor and retain title to the property in the VA, with an agreement that the VA will deed the property to the
borrower when the real estate contract is paid in full, or converted to a note and mortgage.”

In my opinion, this question, in effect, has been answered previously by 1963 O. A. G., page 101, No. 22, which Opinion advised that state-chartered building and loan associations are authorized to purchase mortgage loans, which loans are either wholly or partially insured by an agency of the United States Government.

The Acts of 1933, ch. 40, § 273, as amended, as found in Burns IND. STAT. ANN., (1965 Supp.), § 18-2123, states:

“Subject to the provisions of this act, any association may invest the funds received by it in the following, but in no other manner unless specifically authorized by acts supplemental hereto:

* * *

“(g) Subject to such regulations as the department finds to be necessary and proper:

* * *

“(4) In such loans secured by mortgage on real property or leasehold as are eligible for guaranty or insurance by the United States government under the ‘Servicemen’s Readjustment Act of 1944,’ and acts amendatory thereof and supplemental thereto, and to obtain such guaranty or insurance.

“No law of this state prescribing or restricting the nature or amount of any loan or the form, location or amount of security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, shall be deemed to apply to loans, advances of credit or purchases made pursuant to the foregoing subsections (1), (2), (3) and (4). Any rule or regulation made and promulgated under and pursuant to this subsection may apply to one or more building and loan associations and/or one or more localities in the state as the department, in its discretion may determine.” (Emphasis added.)
Moreover, in addition to the foregoing statutory provision which is expressly applicable to state-chartered building and loan associations, the Acts of 1945, ch. 47, as found in Burns IND. STAT. ANN., §§ 18-3301, 18-3302, and 18-3303, applies to:

"... any loans or obligations of any financial institution as defined in section 3 of chapter 40 of the Acts of the General Assembly of the state of Indiana for 1933, as amended...." (Emphasis added.)

which definition of "financial institution," as found in Burns IND. STAT. ANN., § 18-103 (a), specifically includes building and loan associations either organized or reorganized under the provisions of "The Indiana Financial Institutions Act," Acts of 1933, ch. 40, as amended or organized under the provisions of any law enacted prior to the passage of said act. Sections 1 and 3 of the Acts of 1945, ch. 47, as found in Burns IND. STAT. ANN., §§ 18-3301 and 18-3303, provide:

§ 18-3301 "Whenever the United States, any federal reserve bank of the United States, or any department, bureau, board or commission of the United States, including any corporation wholly owned directly or indirectly by the United States, shall secure or guarantee the payment of or make commitment or agreement to take over or purchase the full amount of any loans or obligations of any financial institution as defined in section 3 [§ 18-103] of chapter 40 of the Acts of the General Assembly of the state of Indiana for 1933, as amended, or of any investment type industrial loan and investment company, such loans or obligations shall not be subject to any limitations in the laws of this state based upon the nature, priority, amount, location or form of security, prescribing or limiting the period for which loans or advances of credit may be made, prescribing any ratio between the amount of any loan and the appraised value of security for such loan or requiring periodical reduction of the principal of any loan."

§ 18-3303 "To permit and encourage financial institutions and investment type industrial loan and investment companies of this state to make loans secured
or guaranteed or upon which there is a commitment or agreement to take over or purchase in whole or part by the United States or an agency thereof, as described in section 1 [§ 18-3303] of this act, on terms, provisions and conditions equal to those applicable from time to time to national banking associations and to federal savings and loan associations, as the case may be, the department of financial institutions is hereby authorized and empowered to supplement sections 1 and 2 [§§ 18-3301, 18-3302] of this act by making and promulgating rules and regulations with respect to the nature, priority, amount, location or form of security for such loans, prescribing or limiting the period for which such loans or advances for credit may be made, prescribing any ratio between the amount of such loans and the appraised value of security, and requiring periodical reduction of the principal of any loan which any such financial institution of this state may make. Such rules and regulations shall not restrict the provisions of sections 1 and 2 [§§ 18-3301, 18-3302] hereof.”

(Emphasis added.)

The said Acts of 1945, ch. 47, §§ 1, 2, and 3, Burns §§ 18-3301, 18-3302, and 18-3303, supra, have not been amended since the issuance of the above-referred-to Official Opinion of the Attorney General in 1963, and although the Acts of 1933, ch. 40, § 273, as amended, Burns IND. STAT. ANN., (1965 Supp.), § 18-2123, supra, was last amended by the Acts of 1965, ch. 35, § 3, nevertheless, such amendment thereto did not alter the portions of said section which were under consideration in said 1963 Attorney General’s Opinion.

Therefore, based upon each of said statutory provisions, it is my Opinion that state-chartered building and loan associations may invest in such real estate contracts as are the subject of your inquiry so long as such investments are protected by the 100% repurchase guaranty of the United States or the Veterans Administration and so long as all requirements of Burns § 18-2123, supra, Burns §§ 18-3301 and 18-3303, supra, relating to such investments are followed. It
should be noted that perhaps not all of the three procedures outlined at the commencement of this Opinion would necessarily comply with Burns § 18-2123, supra, which refers to loans "secured by mortgage on real property." While procedures No. 1 and No. 2 would result in the investor or state-chartered building and loan association either receiving a mortgage on or deed to the subject real estate, procedure No. 3 does not provide for the investor or state-chartered building and loan association to receive any security interest in such property. While recognizing that the 100% repurchase guaranty by the United States or the Veterans Administration would apparently provide sufficient protection, such procedure No. 3 would seem not to conform to Burns § 18-2123, supra, requiring the security of a mortgage, implying that such mortgage security be in the name of the state-chartered building and loan association.

There is authority in both "The Financial Institutions Act," as amended, and in the Acts of 1945, ch. 47, § 3, Burns § 18-3303, supra, for the Department of Financial Institutions to make and promulgate whatever rules and regulations the Department finds to be necessary and proper to supplement such statutory powers, including the making of a regulation respecting the form of security for such loans. Thus, it would be proper for such supplementary rules and regulations to authorize (as relating to the form of security) what type of evidence must be furnished to substantiate that the particular investment is, in fact, protected by the 100% repurchase guaranty of the United States or the Veterans Administration.

OFFICIAL OPINION NO. 67

November 24, 1965

Hon. William E. Wilson
Superintendent of Public Instruction
227 State House
Indianapolis, Indiana

Dear Mr. Wilson:

Your recent letter has been received and reads as follows:

"I would appreciate your giving me your Official Opinion on Acts of 1965, Ch. 99, Sec. 1, as found in

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