

of school trustees may by resolution provide for making payments to civil townships as provided in subsection 18 (1) and shall levy taxes as provided in Section 19 as if such provision had been included in the reorganization plan adopted."

5. The Acts of 1963, Ch. 338, is a statute authorizing the adjustments of school corporation boundaries by annexation; but, under its terms, applies only to the adjustment of boundaries between a school corporation formed pursuant to Ch. 202 of the Acts of 1959, as originally adopted or as amended, and another school corporation. This could only occur where continuity of previously created reorganized school corporations continue in existence.

From the foregoing, I am of the opinion newly appointed county committees under the above referred to reorganization statute must recognize the existence of community or united school corporations previously created under the reorganization statute and concern itself only with the adoption of a preliminary and comprehensive plan for the remainder of the county.

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OFFICIAL OPINION NO. 22

June 12, 1963

Mr. Joe McCord, Director  
Department of Financial Institutions  
1024 State Office Building  
Indianapolis, Indiana

Dear Mr. McCord:

Your recent letter requesting my Official Opinion presents the following questions:

"May a State chartered building and loan association purchase either conventional mortgage loans, or mortgage loans insured or guaranteed in whole or in part by an agency of the Federal Government?

"In the event you find that any loans of the types mentioned above may be purchased, may the purchasing association enter into an agreement with the seller

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whereby purchased loans may be serviced by the seller?"

In arriving at an answer to this question it is necessary to consider the law governing proper loans and investments by building and loan associations as set forth in the Acts of 1933, Ch. 40, Sec. 273, as amended and found in Burns' (1962 Supp.), Section 18-2123. The applicable parts of this section read as follows:

"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:

"(1) In such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing commissioner, and to obtain such insurance.

"(2) In such loans secured by mortgages on real property or leasehold, as the federal housing commissioner insures or makes a commitment to insure, and to obtain such insurance.

"(3) In notes or bonds secured by mortgage or trust deed insured by the federal housing commissioner or debentures issued by the federal housing commissioner, or bonds or other securities issued by national mortgage associations.

"(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).”

This section refers to investments in certain type of loans authorized by Congress to be insured by various agencies of the Federal Government. Generally speaking, these loans are secured by mortgages on real estate, and the investments contemplated are in the notes secured by the mortgages or in instruments issued with such note and mortgage as security. For the purpose of this Opinion it is not believed to be necessary to attempt to differentiate between the various types of loans which can be insured by agencies of the Federal Government, but only to state that certain of these loans are insured for 100 per cent of the amount thereof and that others are insured for a lesser per cent.

In reviewing the statutes relative to building and loan associations it becomes evident that the Legislature has passed numerous safeguards in connection with permissible investments or loans of such association. Section 275 of the Acts of 1933, Ch. 40, as amended, and found in Burns' (1962 Supp.), Section 18-2125 limits loans secured by real estate that can be made by restricting the size of a loan to a per cent of the value of the real estate, by restricting the geographical area in which loans can be made, and, in general, confining such business to a local operation which may easily be supervised, and concerning values which are subject to local knowledge and conditions.

However, the Legislature while authorizing investments in loans insured by a federal agency as set forth in Burns' 18-2123 (g), *supra*, deemed it advisable to remove all restrictions in the law pertaining to other loans, from such insured loans. This was done by enacting the unnumbered section at the conclusion of said section (g), in 1937. Such investments are still subject to proper rules and regulations adopted by the Department of Financial Institutions.

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That the Legislature was aware of the fact that insured loans varied as to the percentage of any such loans that may be insured is apparent by the Acts of 1945, Ch. 47, Secs. 1 to 3 inclusive, as found in Burns' (1950 Repl.), Sections 18-3301 to 18-3303, respectively, which read as follows:

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 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."

18-3302 "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 any portion of a loan or obligation 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, or any investment type industrial loan and investment company, any law of this state prescribing the ratio between the amount of any loan or obligation and the appraised value of the security for such loan or obligation shall apply only to the portion of such loan or obligation which is not se-

cured or guaranteed or upon which there is no commitment or agreement to take over or purchase.”

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 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 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 hereof.”

In the above statute, it is noted that the Legislature removed numerous legal limitations, which are applicable to loans generally, from loans which are 100 per cent insured. In the case of partially insured loans the only specific statement concerning removal of restrictions is in regard to appraised value of the security on the unsecured loan. The section is silent on other limitations which might apply to the unsecured portion of the loan. Burns' 18-3303, *supra*, expresses the legislative intent in connection with these loans and empowers the department to supplement sections 1 and 2 (Sections 18-3301 and 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, but they may not restrict the provisions of the act. See also:

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Acts of 1933, Ch. 40, Sec. 275 (g), as amended and found in Burns' (1962 Supp.), Section 18-2125 (g).

In considering Burns' 18-2123, *supra*, consideration must be given to the fact that the terms "eligible for insurance" or "insured" are used in all sections. In construing a statute, words are given their usual and ordinary meaning. In the case of *Ralph L. Shirmeyer, Inc. v. Indiana Review Board et al.* (1951), 229 Ind. 586, 99 N. E. (2d) 847, the court stated:

"It is well settled in this state that in construing statutes, words and phrases will be given their plain, ordinary and usual meaning unless a different purpose is clearly manifest by the statute itself. § 1-201, Burns' 1946 Replacement; \* \* \*."

The word "insurance" is defined as "the action or means of insuring or making certain." The word "insure" is defined as "to make certain, to secure, to guarantee." These definitions are the plain and ordinary meaning of these words, and when applied to the terms in the statute it is clear that such investments are only "eligible for insurance" or "insured" to the extent that they are or can be secured or guaranteed by an agency of the Federal Government. The portion of a loan which is not or cannot be guaranteed is not "eligible for insurance" or "insured."

It is recognized that it is impossible to separate the secured from the unsecured part of the investment and that in taking this position, the practical effect will be to impose restrictions on the part of the investment which is secured, but such a result cannot be avoided under the statute as it exists. In enacting this section, the Legislature could easily have weighed the possible detriment created in limiting the right of building and loan associations to make certain investments as opposed to the harm that might result from the necessity of such associations being forced to attempt the recovery of the unsecured portion of a loan in a far distant foreign state. Among other problems, such an association would be faced with the question of whether the courts of the other state would be open to them as a foreign corporation not admitted to do business, in the event litigation became necessary.

Since the legal limitations on the right to make loans on real estate by building and loan associations are only removed as to a loan eligible for insurance or insured, they remain in effect as to the part of a loan which is not eligible for insurance or insured.

It is my opinion that a state chartered building and loan association may purchase mortgage loans insured, in whole or in part, by an agency of the Federal Government. It is emphasized, however, that in the event such mortgage loan is only partially insured then the statutory limitations and restrictions imposed on a loan secured by real estate by the provisions of Burns' 18-2125, *supra*, would apply to the unsecured portion.

The 1963 Legislature passed Chapter 360 of the Acts of 1963, which, in part, amends the Acts of 1933, Ch. 40, Sec. 252, as amended and found in Burns' (1950 Repl.), Section 18-2102. Such law will become effective when the Acts are promulgated and specifically authorizes investment in conventional mortgage loans which the association would have made as an original loan. Such amendatory Act reads, in part, as follows:

“(h) To purchase any loan or loans of a type which the association is authorized to make, or to purchase a participation therein; to sell any loan or loans owned by the association; to enter into agreements for the continued servicing by the association of loans sold by it; and to enter into agreements permitting the vendor to continue to service any loans or participations purchased by the association.”

Without such express statutory authority, it would be my opinion that the purchase of such loans would not be permissible under existing law, but when the Acts of 1963 are promulgated the amendment will prevail and investments made pursuant to such amended section will be proper.

Your second question pertains to the servicing of all mortgage investments and is very general in nature and the answer thereto is, of necessity, general. Servicing of mortgages insured by a Federal agency is usually regulated, to

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some extent, by such agency. For example, one regulation of the Federal Housing Administration provides that the holder of a mortgage is responsible for proper servicing, even though the actual servicing may be performed by an agent of such holder. It is further noted that Burns' 18-2102, *supra*, expressly permits contracts for servicing of loans in connection with conventional mortgages. There is nothing in the law regulating building and loan associations which prohibits them from appointing agents for this purpose as a necessary incident to the conduct of the business of an association. The general subject of agents is discussed in my 1962 O. A. G., pages 313, 316, No. 57.

Therefore, in answer to your second question, it is my opinion that it is proper for a building and loan association to appoint the seller as agent to service any loan which would be permissible for such association to purchase.

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### OFFICIAL OPINION NO. 23

June 19, 1963

Hon. Allen Nutting, Commissioner  
Bureau of Motor Vehicles  
401 State Office Building  
Indianapolis, Indiana

George A. Everett, Acting Superintendent  
Indiana State Police  
301 State Office Building  
Indianapolis, Indiana

Gentlemen:

I have recently received a letter from each of you which requests an Official Opinion with respect to certain language contained in House Bill No. 1431 in the 1963 General Assembly. The receipt of a memorandum brief concerning the statutory construction of House Bill No. 1431 is also acknowledged. Mr. Nutting's request reads as follows:

"I would like to have an Official Opinion pertaining to House Bill # 1431 regarding the *farm wagon type*