OFFICIAL OPINION NO. 67

December 18, 1959

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

Dear Mr. McCord:

This is in reply to your request for an Official Opinion, which reads, in part, as follows:

"Do state chartered building and loan associations have authority under Section 18-2123(g) (3) to invest in securities issued by the Federal National Mortgage Association?

"The securities in this case might consist of stocks, bonds, debentures and notes offered to the public."

Although the great majority of the obligations, such as mortgages, notes and bonds, which are eligible for investment by building and loan associations pursuant to Acts of 1933, Ch. 40, Sec. 273(g), as amended, as found in Burns’ (1959 Supp.), Section 18-2123(g), are characterized by reason of their being either eligible for insurance by the Federal Housing Commissioner or insured by such commissioner or committed for such insurance, or are eligible for guaranty or insurance by the United States Government under the "Servicemen’s Readjustment Act of 1944," as amended, such is not the case with respect to securities issued by the Federal National Mortgage Association; perhaps this distinguishing factor of the securities in question is the basis for your request, for the obligations of the Federal National Mortgage Association carry the following specific provision:

"As provided in the charter act, this note, together with the interest thereon, is not guaranteed by the United States and does not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the association."

The character and quality with which the United States Government regards such securities is evidenced by the following statement which appears upon the notes of such association:
"This note is a lawful investment, and may be accepted as security for fiduciary, trust, and public funds; the investment or deposit of which is under the authority and control of the United States, or any officer or officers thereof. This note may be purchased and held by national banks without limitation under Section 5136 of the Revised Statutes, as amended, which exempts obligations of the association from the restrictions and limitations generally applicable to investment securities."

The statutory section to which your question refers is Burns' 18-2123 (g), supra, which provides, in part, 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:

* * *

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

* * *

"(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." (Our emphasis)

The section quoted above with which your question is concerned first appeared in the Indiana Financial Institutions Act with the amendment in Acts of 1937, Ch. 33, Sec. 35. The Act does not define the term "national mortgage associations." It is therefore necessary to apply rules of statutory construction in order to determine the meaning of the words in question. By statutory provision, it is required that words and phrases be taken in their plain, or ordinary and usual sense. [2 R. S. (1852), Ch. 17, Sec. 1, as found in Burns' (1946 Repl.), Section 1-201.] In order to determine what the plain and ordinary meaning is, it is necessary to look to extrinsic sources.

Legislative language will be interpreted on the assumption that the Legislature was aware of existing statutes. [Suther-
At the time the words "national mortgage associations" were added to the Indiana Act, there was already in existence a federal act providing for the establishment of national mortgage associations, being Act of June 27, 1934, c. 847, Title III, § 301, 48 Stat. 1252, known as the "National Housing Act." Title III of that Act was entitled "National Mortgage Associations" and provided the manner and circumstances for creating such associations. Section 301(f) of the Act provided:

"(f) No individual, association, partnership, or corporation, except associations organized under this section, shall hereafter use the words 'national mortgage association,' or any combination of such words, as the name or a part thereof under which he or it shall do business. * * *"

The Attorney General of the United States discussed Title III of the National Housing Act at length in 38 Ops. Att'y Gen. 258 (1935) and determined that Congress had the power to provide for the creation of national mortgage associations.

Therefore, at the time the language in the Indiana Act was adopted, the only national mortgage associations which could legally exist were those created under the terms of the Federal Act cited above.

The corporate seal which appears on securities issued by the Federal National Mortgage Association states that the association was incorporated in 1938. The Federal Act of July 1, 1948, c. 784, § 1, 62 Stat. 1207 amended Title III of the National Housing Act generally by creating a Federal National Mortgage Association with power to purchase, service, or sell certain mortgages. The Act provided for the powers and succession of the association, and eliminated the former national mortgage associations created under that section. (See also 12 U. S. C. A., § 1716, note under 1948 Amendments.) Section 301 of the National Housing Act was amended to provide, in part, as follows:

"(b) The Federal National Mortgage Association, a subsidiary of the Reconstruction Finance Corporation and established pursuant to the provisions of this title
as in effect prior to June 1, 1948, shall be the Association referred to in subsection (a) of this section. * * *”

(Our emphasis)

The Federal Act of August 2, 1954, c. 649, Title II, § 201, 68 Stat. 612 again materially amended the provisions of the National Housing Act with respect to the association, providing for its rechartering. However, Sec. 202, 68 Stat. 622, of that Act provided:

“The Federal National Mortgage Association, established pursuant to the provisions of title III of the National Housing Act as in effect prior to July 1, 1948, and named in section 101 of the Government Corporation Control Act, as amended, shall be the body corporate referred to in section 302 of title III of the National Housing Act, as amended by the Housing Act of 1954.”

It is a general rule of statutory construction that a statute, expressed in general terms and words of present or future tense, will be applied, not only to situations existing and known at the time of the enactment, but also prospectively to things and conditions that come into existence thereafter.

Sutherland Statutory Construction, 3rd Ed., Vol. 2, Sec. 5102, p. 509;

Gaiser v. Buck (1932), 203 Ind. 9, 179 N. E. 1, 82 A. L. R. 1348.

It is therefore my opinion that the Federal National Mortgage Association is a national mortgage association within the meaning of those words as used in Burns' 18-2123(g) (3), supra, and therefore bonds or other securities issued by that association are valid investments for funds of Indiana chartered building and loan associations, subject to such regulations as the Department of Financial Institutions finds to be necessary and proper.