

GUARDIANS - WARDS - Estates of World War Veterans under guardianship. Invested how?

June 20, 1934

Honorable Ray J. Cunningham  
Chief Attorney  
Veterans Administration  
4030 Chouteau Avenue  
St. Louis, Missouri



Dear Sir:

We wish to acknowledge your request for an opinion dated June 6, 1934, which is as follows:

"This has reference to an opinion rendered by you under date of November 20, 1933, dealing with the investment of funds in estates under guardianship in Home Owners Loan Bonds.

"At the time of the rendition of your opinion the Home Owners Loan Act provided in effect that the United States Government only guaranteed the interest on said bonds, however the Home Owners Loan Act of 1933 has been amended by Public No. 178, 73d Congress, a copy of which Act is enclosed herewith.

"The Act, as amended, provides that the bonds issued by the Home Owners Loan Corporation, with the approval of the Secretary of the Treasury, 'shall be fully and unconditionally guaranteed, both as to interest and principal, by the United States, and such guaranty shall be expressed on the face thereof and such bonds shall be lawful investments, and may be accepted as security for all fiduciary, trust and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof.'

A further interpretation from your office is requested as to the legality of an investment on the part of a guardian in Home Owners Loan

Bonds as being bonds of the United States under the provisions of Section 418 Revised Statutes, State of Missouri. This Service now has pending numerous requests for investments of this character so that your early consideration to the above will be appreciated.

"Under the Act it would seem that the Home Owners Loan Corporation, as such, is an instrumentality or agent of the United States through which the bonds are sold and liquidated."

It is true that the Home Owners' Loan Act of 1933 has recently been amended by virtue of Senate Bill 2999, Public No. 178--73D Congress, and provides in part as amended, as follows:

"The Corporation is authorized to issue bonds in an aggregate amount not to exceed \$2,000,000,000, which may be sold by the Corporation to obtain funds for carrying out the purposes of this section, or exchanged as hereinafter provided. Such bonds shall be in such forms and denominations, shall mature within such periods of not more than eighteen years from the date of their issue, shall bear such rates of interest not exceeding 4 per centum per annum, shall be subject to such terms and conditions, and shall be issued in such manner and sold at such prices, as may be prescribed by the Corporation, with the approval of the Secretary of the Treasury. Such bonds shall be fully and unconditionally guaranteed both as to interest and principal by the United States, and such guaranty shall be expressed on the face thereof, and such bonds shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof.\* \* \* \*"

Section 418 R. S. Mo. 1929 provides in part as follows:

"Guardians and curators shall, unless the money be invested in improving the real estate of the wards as hereinafter provided, loan the money of their wards at the highest legal rate of interest that can be obtained, on prime real estate security, or invest it in bonds of the United States, or of the state of Missouri, or of the federal farm loan bank except where the estate is less than three hundred dollars, in which case good personal security may be taken, \* \* \* \*"

Our Supreme Court in the case of *In Re: Farmers' Exchange Bank of Gallatin*, 37 S. W. 936, l. c. 942, while interpreting the above section spoke as follows:

"Section 418, above quoted, speaks in no uncertain terms with reference to the manner in which the funds in the hands of a guardian and curator must be invested. If funds are otherwise invested, except as provided by statute, it is unlawful. Even the probate court cannot legally authorize the investment of such funds, except as prescribed. Therefore, the action of the bank, with full knowledge of the situation in this case, in taking the money of the wards and attempting to give the guardians and curator worthless notes in lieu thereof, was not only a violation of the bank's agreement, but was contrary to the provisions of the statute referred to. Such conduct of a third person in dealing with property of a ward cannot be ratified by the guardian and curator on behalf of the ward. Plaintiff had no power or authority to waive any right the wards may have had against the bank or the finance commissioner. She was legally bound to exhaust every legal remedy available to redeem the wards' property."

We note that a similar problem was presented to the Legislature of Missouri when considering the statutory right of the Building and Loan Companies operating in Missouri to assign evidences of debt, together with mortgages and deeds of trust, securing same to the Home Owners' Loan Corporation and to accept in payment thereof and in consideration of said assignment, bonds

of said corporation. The law then existing was set out in Section 5594, Laws of Missouri, 1931, page 150, and gave the building and loan corporation the following power:

"In case there shall be a balance of money remaining undisposed of at any stated meeting, the directors may at their discretion loan the funds so remaining on hand to others than stockholders on the security of prime unencumbered real estate or invest in obligations of the United States or of the State of Missouri and may dispose of such loans and investments at any time the said funds are needed for making loans to members, or for other purposes of the association: \* \* \* \* \*"

That provision, although broader than the provision relating to guardians investing the ward's money, was not considered broad enough to authorize building and loan companies, by implication of the law, to invest in Home Owners' Loan Bonds and, consequently, the legislation, in the Extra Session, 1933, page 49, Section 5594A, expressly provided for the power of building and loan companies to invest in Home Owners' Loan Bonds.

In your query the question presented is this, viz; can a guardian operating under the provisions of Section 418 R. S. Mo. 1929, supra, invest or reinvest the money of his ward in Home Owners' Loan Bonds on which the United States Government has guaranteed payments of principal and interest?

#### CONCLUSION.

Guardians have express authority in Missouri to invest in Bonds of the United States. Home Owners' Loan Bonds are not Bonds of the United States, and this is true in spite of the fact that the United States guarantees payment of principal and interest on the face of the bond. Our Supreme Court is quoted above as limiting the power of a guardian to invest the money of his ward in the certain manner provided by law and holds that to invest them otherwise than is provided by statute, is unlawful. It is not provided by statute that said funds can be invested in Home Owners' Loan Bonds and to say that because a guardian is authorized to invest in bonds of the United States and Home Owners' Loan Bonds being guaranteed by the United States hence are United States Bonds within the meaning of the law, is too forced a construction of the statute to be harmonized with the

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ruling in the Farmers Exchange Bank case, supra. In the building and loan analogous circumstance a new law was enacted making such an investment possible, and it is the opinion of this office that it will take an act of the Missouri Legislature, fashioned after the amendment relating to building and loan companies, before it is possible for a guardian, in Missouri, to invest or reinvest the money of his ward in Home Owners' Loan Bonds. There is no separate rule affecting a guardian of a ward who happens to be a World War veteran having an estate under guardianship.

Respectfully submitted,

WM. ORR SAWYERS  
Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General.

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