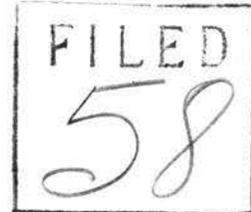


BUILDING AND LOAN - Sewer district trustees are not "trustees of trust funds" so that excess money may be invested in building and loan shares.

December 1, 1938

Honorable J. W. McCammon
Supervisor
Bureau of Building & Loan Supervision
Jefferson City, Missouri



Dear Mr. McCammon:

This department is in receipt of your request for an official opinion which reads as follows:

"Laws of Missouri 1937, page 508, provides that it shall be lawful for 'trustees of trust funds' to invest their trust funds and moneys in their custody or possession in the stock or savings accounts in any building and loan association that is a member of the Federal Home Loan Bank and has its share accounts insured by the Federal Savings and Loan Insurance Corporation.

"I would like to know whether or not 'trustees of trust funds', as used in the above statute, would include trustees of a sewer district.

"Attached herewith is a file which will further explain our request."

The file attached to your request discloses that the Clayton Outfall Sewer District of St. Louis County has certain excess funds which they wish to invest in Building and Loan shares. It appears that

said sewer district was organized under the Article providing for the establishment of sewer districts in counties of 150,000 to 400,000 inhabitants, which was passed by the Legislature at the Extra Session, 1933 and which is found in Laws of Missouri, Extra Session, 1933-34, pages 119 to 136. This law provides for the creation of sewer district in counties of certain sizes to be managed by a board of trustees to be made up of three members elected by the vote of the residents of the district.

The statute imposes various duties upon the board of trustees, such as issuing bonds (Section 8), estimating the amount of money required for the coming year (Section 9), certifying to the county court the amount to be levied (Section 9), appointing an engineer (Section 15), awarding contracts (Section 16), constructing trunk lines and mains (Section 17), appropriating land (Section 18), and employing an attorney (Section 19).

As to the care of the funds of the sewer district, Section 8 of the act provides, in part, as follows:

"* * * * * The monies of the district shall be deposited by the Treasurer of the District in such bank or banks as shall be designated by order of the board of trustees and the Secretary of the District shall charge the Treasurer therewith and the said monies shall be drawn from the said treasury upon warrant issued by the district for the purposes for which the bonds were issued."

Laws of Missouri, 1937, page 508, provides as follows:

"Section 1. May invest trust funds in stock or savings accounts of building and loan associations, when, --- It shall be lawful for banking institutions, trust companies, insurance companies, loan and investment companies, mortgage loan companies and trustees of trust funds, and they are authorized to invest their trust funds and their funds and moneys in their custody or possession, in the stock and/or savings accounts in any federal or state building and loan association a member of a Federal Home Loan Bank, and insured by the Federal Savings and Loan Insurance Corporation, and said institutions and trustees of trust funds are further authorized to become members of said associations according to the Charter and By-laws of said associations; Provided, that no such investment may be made in excess of the maximum amount for which such a stock or savings account may be insured.

"Section 2. Stock or certificates of savings accounts eligible as security for public deposits. - The stock and/or certificates of savings accounts in said associations may be eligible as security for all public deposits in depositories or by public officials, deposits of state or any political subdivision thereof where bonds or deposits are required by law to be deposited."

The question presented is whether trustees of sewer districts are "trustees of trust funds" so as to permit them to invest the funds of the sewer district in shares of a building and loan association insured by the Federal Savings and Loan Insurance Corporation. 18 Corpus Juris, page 580, section 45, states:

"Where there are statutory provisions relating to the deposit of public funds, there is no authority to make a deposit except to the extent and on the terms and conditions prescribed.
* * * * *

In Harris v. Langford, 277 Mo. 527, l. c. 537, 211 S. W. 119, the court had before it the statute requiring drainage funds to be placed in depositories. The court said:

"* * * * * The General Assembly, in its wisdom, has apparently worked out a satisfactory plan for dealing with the above questions and has endeavored to place the county courts under legal obligations to follow the requirements of said laws. * * * * *"

The above quotations illustrate the protective attitude that the law takes towards public funds. The intent to safeguard public moneys is further evidenced by laws passed as to every political subdivision requiring them to deposit their moneys in depositories and laying down the requirements to be followed in so doing.

From a reading of the above statute relating to the duties of the trustees of the sewer district, it will be seen that they are not trustees in the

strict equity sense of the word but rather are commissioners to carry on the administration of the sewer district. This distinction is noted in *Semmes v. the Mayor and Council of Columbus*, 19 Ga. 471. The court says:

"The counsel for plaintiff in error insists, again, that the mayor and council are only trustees for the citizens, and are bound, like all trustees, not to sell or dispose of the property of the city at an undervalue. The mayor and council are vested, by the Act which creates them, in all matters of contract, with special discretionary powers. They may make any contract which they may deem necessary for the welfare of the city. They are not trustees, in the technical sense in which Courts of Equity regard that term. Courts of Chancery, from their inherent jurisdiction, have assumed the control over trustees in the discharge of their duties. (Hill on Trustees, 42.) But these are trustees against whom the only remedy is in a Court of Chancery. The mayor and council, if trustees, do not belong to that class. * * * * *

Willerup v. Village of Hempstead, 199 N. Y. S. 56, aptly explains the status of trustees of the sort provided for by the sewer law. The court said:

"Trustees of a villare are public officers selected under the law for the purpose of duly administering the public affairs of the village."

From a reading of Laws of Missouri, 1937, page 508, it will be seen that the "trustees of trust funds" referred to are those trustees who are trustees of express trusts holding money thereunder for the benefit of someone and over whom a court of equity would have jurisdiction.

The trustees of a sewer district are not of this type and cannot be included within the scope of the statute so as to allow them to invest district funds in shares of building and loan associations.

CONCLUSION

It is, therefore, the opinion of this department that trustees of a sewer district organized under Laws of Missouri, Extra Session, 1933-34, pages 119 to 136, are not "trustees of trust funds" within the meaning of Laws of Missouri, 1937, page 508, so as to permit them to invest the funds of the sewer district in shares of a building and loan association insured by the Federal Savings and Loan Insurance Corporation.

Respectfully submitted

ARTHUR O'KEEFE
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APPROVED

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(Acting) Attorney General

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