

Official Opinion No. 81-46, Legality of Charles Mix County Accounts Maintained in a Federal Savings and Loan Institution

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Mr. Raymond R. DeGeest
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Official Opinion No. 81-46

Legality of Charles Mix County Accounts Maintained in a Federal Savings and Loan Institution

Dear Mr. DeGeest:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

Charles Mix County has funds invested in two separate accounts totaling \$100,000 each in the First Federal Savings and Loan Associates of Wagner, South Dakota. One account is earmarked Charles Mix County Revenue Sharing Fund and the other as the Charles Mix County Road and Bridge Fund. The officers of the savings and loan association indicate the county is covered under the Federal Savings and Loan Insurance Corporation (FSLIC).

Based on the above facts, you have asked the following question:

QUESTION:

Is the county in violation of SDCL 7-20-1.1?

SDCL 7-20-1.1 provides:

Domestic savings and loan associations whether chartered by this state or by the United States are hereby designated as official depositories for county funds, provided such funds

shall be invested only in the accounts of such associations which are insured by the federal savings and loan insurance corporation, and the amount so invested in any one association shall not exceed the amount which is covered by such insurance. Provided further that such funds shall only be deposited with savings and loan associations located within the county where the funds originate.

To be in compliance with this statute, the county must meet three conditions in the investment of county funds in savings and loan associations: (1) the funds shall be invested only in the accounts of such associations which are insured by the FSLIC; (2) the amount so invested in any one association shall not exceed the amount which is covered by such insurance; and (3) such funds shall only be deposited with savings and loan associations located within the county where the funds originate.

According to the factual situation you present, Charles Mix County has clearly met conditions one and three: the funds are invested in a savings and loan institution whose accounts are insured by the FSLIC and the First Federal Savings and Loan Associates of Wagner is located within Charles Mix County, where the funds originate.

To determine if Charles Mix County has complied with condition number two, it is necessary to consult federal law governing the FSLIC. First I refer you to 12 U.S.C.A. § 1724(b) and (c) which define terms used in the federal statutes and regulations:

(b) The term 'insured member' means an individual, partnership, association, or corporation which holds an insured account. Each officer, employee, or agent of the United States, of any State of the United States, of the District of Columbia, of any Territory of the United States, of Puerto Rico, of the Virgin Islands, of any county, of any municipality, or of any political subdivision thereof, herein called 'public unit,' having official custody of public funds and lawfully investing the same in an insured institution shall, for the purpose of determining the amount of the insured account, be deemed an insured member in such custodial capacity separate and distinct from any other officer, employee, or agent of the same or any public unit having official custody of public funds and lawfully investing the same in the same insured institution in custodial capacity. (Remainder of paragraph deleted.)

(c) The term 'insured account' means a share, certificate, or deposit account of a type approved by the Federal Savings and Loan Corporation which is held by an insured member in an insured institution and which is insured under the provisions of this subchapter.

The amount of the insurance allowed per account is discussed in 12 U.S.C.A. § 1728(a) which reads:

Each institution whose application for insurance under this subchapter is approved by the Corporation shall be entitled to insurance up to the full withdrawal or repurchasable value of the accounts of each of its members and investors (including individuals, partnerships, associations, and _corporations) holding withdrawable or repurchasable shares, investment certificates, or deposits, in such institution; except that no member or investor (other than a member or investor referred to in subsection (d) of this title) of any such institution shall be insured for an aggregate amount in excess of \$100,000. For the purpose of clarifying and defining the insurance coverage under this subsection, subsection (d) of this section, and subsection (b) of section 1724 of this title, the Corporation is authorized to define, with such classifications and exceptions as it may prescribe, terms used in those subsections and in subsection (c) of section 1724 of this title and the extent of the insurance coverage resulting therefrom.

Subsection (d), which is referred to above, reads as follows:

(1) Notwithstanding any limitation in this subchapter or in any other provision of law relating to the amount of deposit insurance available for any one account, in the case of an insured member who is--

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing the same in an insured institution;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in an _insured institution in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in an insured institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, or of the Virgin Islands, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds

and lawfully investing the same in an insured institution in the Commonwealth of Puerto Rico, the Virgin Islands, or any such territory or possession, respectively; or

(v) an officer, employee or agent of any Indian tribe (as defined in section 1452(c) of Title 25) or agency thereof having official custody of tribal funds and lawfully investing the same in an insured institution; the account of such insured member shall be insured in an amount not to exceed \$100,000 per account.

On its face, the statute appears to limit insurance coverage of members to the aggregate amount of \$100,000 with the exception that members such as county treasurers referred to in subsection (d) may be insured up to \$100,000 per account.

However, under the authority of 12 U.S.C.A. 1728(a) which allows the Federal Savings and Loan Insurance Corporation 'to define, with such classifications and exceptions as it may prescribe,' terms used in subsection (a) and (d) of § 1728 and subsections (b) and (c) of § 1724 and the extent of insurance coverage resulting therefrom, the Corporation has developed regulations, the most recent of which appear in Vol. 45, No. 76 of the Federal Register, dated April 17, 1980.

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the account holder. All funds belonging to a public unit and invested by the same custodian in an insured institution are added together and insured to the \$100,000 maximum, regardless of the number of accounts involved and regardless of whether the funds are invested in accounts located in or outside the state. If there is more than one official custodian for the same public unit, the funds invested by each custodian are separately insured up to \$100,000. If the same person is custodian of funds for more than one public unit, he is separately insured to \$100,000 with respect to the funds of each unit held by him in properly designated accounts. The maximum coverage for an official custodian of funds of the United States would be \$100,000.

For insurance purposes, a 'political subdivision' is entitled to the same insurance coverage as any other public unit. 'Political subdivision' includes any subdivision of a public unit or any principal department of such unit (1) the creation of which has been expressly authorized by state statute (2) to which some functions of government have been allocated by state statute and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control.

It is my opinion that neither the Charles Mix County Road and Bridge Fund nor the Charles Mix County Revenue Sharing Fund can be considered funds belonging to a 'political subdivision' as defined in the federal regulations just cited. Since the Charles Mix County Treasurer is designated an 'insured member' under the federal statute and is the official custodian of funds belonging to the county, all funds invested by the County Treasurer are added together and insured to the \$100,000 maximum regardless of the number of accounts involved.

Therefore, to answer your specific question, Charles Mix County would be in violation of SDCL 7-20-1.1 in that the county cannot invest funds in a savings and loan association in excess of the total amount insured by the FSLIC: in this case \$100,000.

I might add that upon receipt of your opinion request of March 24, 1981, I immediately requested an opinion from the Federal Home Loan Bank Board as to whether or not the various county funds would be individually insured. Last week I received their reply which in effect said that it depends on the facts of the case.

Since the Federal Home Loan Bank Board has not said that the various funds are individually insured, I believe it is safest to assume that they are not, consistent with my above opinion.

Respectfully submitted,

Mark V. Meierhenry
Attorney General