

OFFICIAL OPINION NO. 87-06, Investment or public funds in securities, directly or indirectly guaranteed by the United States government

February 20, 1987

Maurice Christiansen
Auditor General
Department of Legislative Audit
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Pierre, South Dakota 57501

OFFICIAL OPINION NO. 87-06

Investment or public funds in securities, directly or indirectly guaranteed by the United States government

Dear Mr. Christiansen:

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

QUESTION:

May school districts, counties and municipalities invest in funds created by a brokerage firm, bank, or other financial institution which has purchased securities directly or indirectly guaranteed by the Federal Government?

The answer to your question is governed by relevant statutes governing an investment of political subdivision funds, SDCL 4-5-5 through 4-5-11. SDCL 4-5-6 provides:

Any public funds which will not be needed for current operating expenses, may be invested in securities of the United States and securities guaranteed by the United States government either directly or indirectly and redeemable within eighteen months from the date of purchase. The maturity date may exceed eighteen months. Provided, however, that permanent, trust, retirement and building funds may be invested in securities having a redeemable date beyond eighteen months.

SDCL 4-5-11 provides:

Sections 4-5-5 to 4-5-10, inclusive, are supplemental to any other laws relating to the investment, deposit or administration of the public funds therein specified, and shall supersede the provisions thereof only to the extent that such other laws may restrict or prohibit investments in accordance with the provisions thereof.

A review of the relevant statutory provisions governing the separate investment powers of school districts as contained in SDCL ch. 13-16; counties as contained in SDCL ch. 7-20; and municipalities as contained in SDCL ch. 9-22 reveals there are no other statutes that grant broader investment authority.

Based upon a review of the above-discussed statutory provisions, it is my opinion, that school districts, counties and municipalities under SDCL 4-5-6 may invest in funds created by a brokerage firm, bank or other financial institution only when they receive an ownership interest in the actual securities at that are issued by the United States, or the securities guaranteed directly or indirectly by the United States government. It is my opinion that the "securities of the United States" include U.S. Savings Bonds, U.S. Treasury Notes and other securities issued by the United States government. "[S]ecurities guaranteed by the United States government, either directly or indirectly," would include bonds, notes and other securities for which the United States government will guarantee payment if the original fails to perform his responsibilities. Examples of these types of securities would include G.N.M.A.s. and F.R.M.A.C.s and other comparable types of securities.

Under SDCL 4-5-6, political subdivisions cannot invest in mutual funds or other types of equity funds that purchase United States securities or securities guaranteed by the United States government either directly or indirectly where the local political subdivision would not acquire an ownership interest in the securities themselves. The reason for this restriction is that the mutual funds themselves are not guaranteed directly or indirectly by the United States, government. In order to acquire an ownership interest, the local governmental entity must have a direct assignment of a specific portion of the securities themselves.

In rendering my opinion, I am in no way making any statement concerning the propriety of investments in mutual funds and other types of equity securities. This opinion is only based upon my interpretation of the relevant statutes.

Sincerely,

Roger A. Tellinghuisen
ATTORNEY GENERAL