



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

December 7, 1978

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ATTORNEY GENERAL OPINION NO. 78- 379

The Honorable Joan Finney  
State Treasurer  
535 Kansas Avenue  
Topeka, Kansas 66603

Re: State Departments--State Moneys--Pledgable Status of  
Certain Obligations

Synopsis: A mortgage for real property which is insured as to principal and interest by the United States Federal Housing Administration via initial endorsement for mortgage insurance issued pursuant to Section 221(d)(4) of the National Housing Act of 1934 (24 U.S.C.A. § 1915(1)) may be pledged to secure state bank accounts under K.S.A. 75-4218.

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Dear Mrs. Finney:

You request the opinion of this office whether a non-recourse mortgage for real property and improvements thereon given incidental to a Kansas industrial revenue bond issue (K.S.A. 12-1740 et seq.) and insured by the Federal Housing Administration (FHA) pursuant to Title II of the National Housing Act of 1934, as amended, satisfies the definition for "securities" provided in Chapter 360, Laws of 1978 [K.S.A. 1978 Supp. 75-4201 (p)(1)] thereby securing the requisite pledgable status required by K.S.A. 75-4218 to secure state bank accounts.

Three elements must be present for an obligation to qualify as a security under the State Moneys Act: (1) there must be an "obligation" within the meaning of the term as used in the Act; (2) it must be insured as to principal and interest; and, (3) such insurance must be issued by the United States government or one of its agencies. K.S.A. 1978 Supp. 75-4201(p)(1).


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This office earlier opined that the term "obligation" as employed in K.S.A. 1978 Supp. 75-4201(p)(1) could be defined as that which binds as an oath, vow, promise, contract or debt.<sup>1</sup> Pursuant to our longstanding policy we have examined the specific instrument for which you have requested our review: an executed mortgage (and mortgage note) FHA Form No. 4120-b given by Santa Fe Towers Development Co., mortgagor, to Huntoon, Paige Associates, Ltd., mortgagee, in the amount of \$7,079,300, dated September 25, 1978. This mortgage appears clearly to constitute an obligation as above defined.

As for the requirement that such obligations be insured as to principal and interest, the Federal Housing Commissioner has issued a commitment for insurance of advances on the above referenced mortgage. It is suggested that this instrument alone provides the requisite insurance to satisfy the statutory definition. We do not agree. The nature of the government's obligation identified in the commitment instrument is contingent upon the full compliance with the terms of such instrument. Only upon such compliance is FHA legally bound to initially endorse the mortgage for insurance, thereby creating the required binding and enforceable obligations. 24 C.F.R. §§ 200.149(b) and 200.152. Once the initial endorsement has been secured the mortgage becomes insured for principal and interest. 24 C.F.R. § 207.259. We are advised that the initial endorsement for the mortgage here examined is anticipated.

Since such FHA mortgage insurance is issued by an agency of the United States government,<sup>2</sup> it is the opinion of this office that a mortgage insured as to principal and interest by FHA initial endorsement for mortgage insurance qualifies as a pledgable security for the purpose of securing state bank accounts under K.S.A. 75-4218.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj

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1. See Kansas Attorney General Opinion No. 75-165 dated April 15, 1975, addressed to Mr. Lyle D. Ocobock, Special Assistant State Treasurer.

2. *Id.*