

JULY 11, 1949.

HON. WALTER R. DARBY, *Director,*  
*Department of the Treasury,*  
*Division of Local Government,*  
Commonwealth Building,  
Trenton 8, New Jersey.

## FORMAL OPINION—1949. No. 80.

DEAR SIR:

I have before me your letter of June 30, 1949, wherein you request an opinion relative to the right of a municipality to place its funds in a Savings and Loan Association.

It appears that several municipalities have made inquiry of you as to the availability of such institutions for their funds.

You inquire as to "whether a municipality has the power to deposit *any moneys* which may be in hand 'in one or more accounts in any insured association' as referred to in Section 151, of Article 20 of Chapter 56, P. L. 1946." You further inquire, in the sense of refining the primary question, "as to whether current funds which are not ordinarily eligible to investment may be deposited in the accounts of any insured Savings and Loan Association."

We are of the opinion that a municipality may invest its funds in an account or accounts of an insured Federal or State Savings and Loan Association in amounts not exceeding the amounts for which such accounts are insured, pursuant to the authority contained in the aforementioned statute.

It is fundamental under the formula of government established in this State that a municipality is a creature of the Legislature and that all authority for its actions must be found in the acts of that paramount body.

In 1937, the Legislature enacted the Revised Statutes and in Section 40:3-3 of that body of law we find the following direction to municipalities concerning the custody of its funds:

"Any county or municipality may select as a depository for its moneys any bank organized under the laws of the United States, having its place of business in this state, or any bank or trust company organized under the laws of this state."

Prior to its expenditure for legal purposes, all moneys of a municipality are required to be kept in a National Bank or a State Bank or Trust Company.

However, in 1941, we find that the Legislature, in the proper exercise of its authority on such matters, enacted Chapter 297, P. L. 1941, which was amended three times, by Chapter 304, P. L. 1942; Chapter 208, P. L. 1943, and Chapter 250, P. L. 1944, whereby municipalities were authorized "to use moneys, which may be in hand, for the purchase of War Savings Bonds or other obligations of the United States of America."

Again in 1946, the Legislature enacted Section 151 of Chapter 56, P. L. 1946, the statute under discussion, which reads as follows:

"All public funds, including those of the State of New Jersey, or any county or municipality or other political subdivision of New Jersey, and those in the control or possession of any public board or official, and all trust funds of every character in the control or possession of any fiduciary or other person or corporation, may, without any order of any court, be invested in one or more accounts in any insured association or any federal association whose principal office is located in New Jersey in any amounts up to, but not exceeding, the amounts for which such accounts are insured.

"Any such account, in any amount up to, but not exceeding, the amount for which it is insured, shall be eligible for acceptance as security, whenever security is required by any law of this State."

The foregoing recital of the Legislature's activity on the subject reveals the pattern of that body's intent relative to the custody of the moneys of a municipality. We find the general rule to be that a municipality must keep its money in a depository as defined in R. S. 40:5-3. Without disturbing that rule, the Legislature in later enactments has permitted the "purchase" of War Savings Bonds and other obligations of the Federal Government and an "investment" in an insured Federal or State Savings and Loan Association within certain limitations.

We cannot see any conflict in these statutes. Moneys not used for the purchase of Federal bonds or invested in a Savings and Loan Association, must be kept in a statutory depository. In fact, both uses permitted are in the nature of investments, because a Savings and Loan Association cannot accept deposits, as we generally understand the term, and the purchase of a Federal obligation is certainly not a deposit. Thus, the matter is crystallized to the point that the Legislature has authorized additional uses to be made of moneys of a municipality than theretofore provided by law.

Our reading of the law fails to reveal any intent on the part of the Legislature to define the moneys, or the nature of its status, which a municipality may invest in a Savings and Loan Association. It merely states that "all public funds" of a municipality may be so invested. In view of this statement of the law, we have no alternative but to conclude that *any moneys* belonging to a municipality, regardless of its status, may be used for that purpose within the limitations of the statute.

Very truly yours,

THEODORE D. PARSONS,  
*Attorney General,*

By: OLIVER T. SOMERVILLE,  
*Deputy Attorney General.*

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