

MARCH 23, 1956

HON. GEORGE C. SKILLMAN
Director of Local Government
Department of the Treasury
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-11

DEAR DIRECTOR :

You have requested our advice as to whether or not a municipality maintaining separate funds as hereinafter described may properly invest those funds in a saving and loan association up to the limit of \$10,000 in each of these funds. The answer depends, in our opinion, upon whether the separate account maintained by each of these funds would be insured by the Federal Savings and Loan Insurance Corporation. See R.S. 17:12A-151; Formal Opinion 1949, No. 80. For the reasons hereinafter given, our answer is in the affirmative.

The funds in question, which are required by law to be kept in separate accounts are (1) tax moneys and other revenues to support its general operations, known as the "Current Account", (2) moneys derived from the operation of each publicly owned or operated utility, known as the "Utility Fund" (R.S. 40:2-33), and (3) receipts derived from special assessments on property specially benefited by local improvement, known as the "Assessment Revenue Fund" (R.S. 40:2-34). It is expressly provided in R.S. 40:2-33 that the Utility Fund shall be applied only to the payment of operating and maintenance costs and debt service of such utility; and R.S. 40:2-34 makes a similar provision that the Assessment Revenue Fund shall be applied only to the payment of that part of the cost of any such improvement as has been specially assessed, or of any bonds to finance such improvement, until all such bonds have been paid. R.S. 40:2-35 further provides :

"Moneys held in any separate fund shall be treated by the officers of the county or municipality as moneys held in trust for the purpose for which such separate fund was created and no banking institution accepting any such fund shall divert the moneys in such funds to any other purpose."

Upon receipt of your inquiry, we wrote to the Federal Savings and Loan Insurance Corporation, which has replied with the following opinion from its Legal Department :

"Section 401(b) of the National Housing Act, as amended, provides that a public official having official custody of public funds and lawfully investing the same in an insured institution is an insured member and for the purpose of determining the amount of the insured account shall '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.'

"Recognizing that various funds held by a public official may be held under different conditions as funds allocated to bond-holders or other individuals dealing with a public unit as distinguished from general funds, the

Legal Department has construed the statute as permitting the separate insurance of funds which are distinct funds required under local law to be held separate and to be used for a specific purpose, provided each such fund is held by the public official in a custodial capacity distinct from his official capacity as custodian of other funds or general funds of the public unit. However, the mere labelling of funds for accounting or bookkeeping purposes would not permit separate insurance of each such fund for the reason all would be held in the same custodial capacity. The custodial capacity in which funds are held determines insurance coverage and not the title of an account."

In view of the foregoing, we are of the opinion that each of the funds in question would be held by a municipal official in a custodial capacity distinct from his official capacity as custodian of other funds of the municipality; that each such fund would therefore be insured up to the amount of \$10,000; and that, accordingly, a municipality may properly invest each of said funds in an insured savings and loan association up to the limit of \$10,000 in each fund.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: THOMAS P. COOK
Deputy Attorney General

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MARCH 23, 1956

HONORABLE EDWARD J. PATTEN
Secretary of State
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-12

DEAR MR. PATTEN:

You submit for our opinion the following question:

"Can a Member of the County Board of Elections be a candidate for Delegate to the National Convention?"

The election statute, R.S. 19:6-17, provides:

"19:6-17. The county board shall consist of four persons, who shall be legal voters of the counties for which they are respectively appointed. Two members of such county board shall be members of the political party which at the last preceding general election, held for the election of all of the members of the general assembly, cast the largest number of votes in this state for members of the general assembly, and the remaining two members of such board shall be members of the political party which at such election cast the next largest number of votes in the state for members of the general assembly. No person who holds elective public office shall be eligible to serve as a member of the county board during the term of such elective office. The office of member of the county board shall be deemed vacant