



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Charley Lockhart  
State Treasurer  
Austin, Texas

Dear Sir:

Attention: Mr. H. Morris Stevens

Opinion No. 9-1084

Re: Whether Federal Building and  
Loan Associations are exempt  
from the payment of State  
note taxes levied by Article  
7047e, as amended by Senate  
Bill No. 24, 46th Legislature.

We received your letter of July 1, 1939, requesting our opinion as to whether Federal Building and Loan Associations are exempt from the payment of the State note tax levied by Article 7047e, Revised Civil Statutes, as amended by Senate Bill No. 24, 46th Legislature.

After providing for the levy of a tax of Ten (10¢) Cents on each One Hundred (\$100) Dollars after the first Two Hundred (\$200) Dollars on certain notes and obligations secured by liens filed for record in the county clerk's office, this statute then provides that: "This Section shall not apply to instruments, notes or other obligations taken by or on behalf of the United States or of the State of Texas, or any corporate agency or instrumentality of the United States or of the State of Texas in carrying out the governmental purpose as expressed in any act of the Congress of the United States or of the Legislature of the State of Texas."

The Home Owners' Loan Act of 1933 is found beginning with section 1462, Chapter 12, Title 12, U.S.C.A. Subdivision A of Section 1463 reads as follows:

"(a) Creation; directors. The Board is hereby authorized and directed to create a corporation to be known as the Home Owners' Loan Corporation, which shall be an

Hon. Charley Lockhart, Page 2

instrumentality of the United States, which shall have authority to sue and to be sued in any court of competent jurisdiction, Federal or State, and which shall be under the direction of the Board and operated by it under such by-laws, rules, and regulations as it may prescribe for the accomplishment of the purposes and intent of this section. The members of the Board shall constitute the Board of Directors of the Corporation and shall serve as such directors without additional compensation."

Subdivision (c) of Section 1463 provides that:

"The bonds issued by the Corporation under this subsection shall be exempt, both as to principal and interest, from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any District, Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority. The Corporation, including its franchise, its capital, reserves and surplus, and its loans and income, shall likewise be exempt from such taxation; except that any real property of the Corporation shall be subject to taxation to the same extent, according to its value, as other real property is taxed. . ."

The organization of Federal Savings and Loan Associations is authorized by Subdivision (a) of Section 1464, U.S.C.A., which reads as follows:

"(a) Organization authorized. In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as 'Federal Savings and Loan Associations,' and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States."

Subdivision (f) of said Section 1464 reads as follows:

"(f) Associations as members of Federal Home Loan Bank. Each such association, upon its incorporation, shall become automatically a member of the Federal Home Loan Bank

of the district in which it is located, or if convenience shall require and the Board approve, shall become a member of a Federal Home Loan Bank of an adjoining district. Such associations shall qualify for such membership in the manner provided in chapter 11 of this title with respect to other members."

Subdivision (h) of said Section reads as follows:

"(h) Exemptions from taxation. Such associations, including their franchises, capital, reserves, and surplus, and their loans and income, shall be exempt from all taxation now or hereafter imposed by the United States, and all shares of such associations shall be exempt both as to their value and the income therefrom from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States; and no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

Subdivision (k) of said Section 1464 reads as follows:

"(k) Federal Savings and Loan Associations, or Federal Home Loan Banks as fiscal agents of United States. When designated for that purpose by the Secretary of the Treasury, any Federal savings and loan association or member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. Any Federal savings and loan association or member of any Federal Home Loan Bank may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality of the United States. (June 13, 1933, c. 64, § 5, 48 Stat. 132; Apr. 27, 1934, c. 168, §§ 5, 6, 48 Stat. 645, 646; May 28, 1935, c. 150, § 18, 49 Stat. 297.)

The Federal Home Loan Bank Act is found beginning with Section 1421, Chapter 11, Title 12, U.S.C.A. Subdivision (c) of

on. Charley Lockhart, Page 4

Section 1426, U.S.C.A., makes provision for stock subscription for members of the Federal Home Loan Bank. Section 1430, U. S. C. A., makes provision for advances or loans by the Federal Home Loan Bank to its members. Section 1433, U.S.C.A., provides certain broad exemptions from taxation for the Federal Home Loan Bank, but it is not provided that such exemptions shall be available to members of such bank.

Subdivision (g) of Section 1464 authorizes the Secretary of Treasury, in behalf of the United States, to subscribe for preferred shares in such association, and Congress therein appropriated \$100,000,000.00 to enable the Secretary of Treasury to subscribe to stock in such association. Section 1465, U.S.C.A. reads as follows:

§ 1465. Encouragement of saving and home financing  
To enable the Board to encourage local thrift and local home financing and to promote, organize, and develop the associations herein provided for or similar associations organized under local laws, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$150,000, to be immediately available and remain available until expended, subject to the call of the Board, which sum, or so much thereof as may be necessary, the Board is authorized to use in its discretion for the accomplishment of the purposes of this section without regard to the provisions of any other law governing the expenditure of public funds. For the purposes of this section the Secretary of the Treasury is authorized and directed to allocate and make immediately available to the Board, out of the funds appropriated pursuant to section 1464 (g), the sum of \$700,000. Such sum shall be in addition to the funds appropriated pursuant to this section, and shall be in addition to the funds appropriated pursuant to this section, and shall be subject to the call of the Board and shall remain available until expended. The sums appropriated and made available pursuant to this section shall be used impartially in the promotion and development of local thrift and home-financing institutions, whether State or Federally chartered. (June 13, 1933, c. 64 § 6, 48 Stat. 134; Apr. 27, 1934, c. 168, § 11, 48 Stat. 647; May 28, 1935, c. 150, § 19, 49 Stat. 297.)

The fact that Congress expressly clothed the Home Owners' Corporation with the exemption from any taxation except upon

rley Lockhart, Page 5

property (Section 1463 c) and extended the same exemp-  
Federal Home Loan Banks (Section 1433) and exempted Federal  
Savings and Loan Associations from taxation by the United States,  
but provided that "no State, territorial, county, municipal, or  
local taxing authority shall impose any tax on such associations  
or their franchise, capital, reserves, surplus, loans or income  
greater than that imposed by such authority on other similar local  
mutual or cooperative thrift and home financing institutions,"  
(Section 1464 a), in our opinion would leave the State free to col-  
lect the tax in question from Federal Savings and Loan Associations  
mortgage instruments taken by it.

The question thus left for our determination is whether  
under the terms of the State statute instruments taken by such  
associations are subject to the tax. The fact that Subdivision (k)  
Section 1464, U.S.C.A., provides that such associations may be  
used as fiscal agents of the Government and may also act as  
agents for other instrumentalities of the United States, when  
authorized to act in said capacities by the proper authorities,  
leads us to conclude that the Congress of the United States did not  
intend that such associations would generally be instrumentalities  
of the United States in the performance of their usual  
business. This view is strengthened by the fact that the Home  
Loan Corporation is expressly declared to be an instrument-  
ality of the United States, and without any limitation being placed  
thereon, and by the differences made in the matter of exemptions  
from taxation.

While in your question you speak of Federal Building and  
Loan Associations, we assume that you have reference to Federal  
Savings and Loan Associations and answer your question in the nega-  
tive. This answer requires us to overrule an opinion written June 10,  
1939, by Honorable H. L. Williford, Assistant Attorney General, to  
Honorable S. Kagee, Assistant County Attorney of Galveston, Texas.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*

Glenn R. Lewis  
Assistant



EDAUG 12, 1939

*Edith Mann*

ATTORNEY GENERAL OF TEXAS