Text as published on gao.gov, https://www.gao.gov/products/b-143844, archived 2026-09-03. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-143844 November 15, 1960

Number: B-143844

Date: 1960-11-15

B-143844 November 15, 1960

Honorable Hugh Alexander House of Representatives

Dear Mr. Alexander:

Further reference is made to your interest in the indebtedness of Henry C. and Wanda K. Russell of Kannapolis, North Carolina, Mortgage Loan No. 03940018, which was reported here for collection by the Veterans Administration Regional Office, Winston Salem, North Carolina, on May 23, 1960.

It appears that the Veterans Administration under the authority of 38 U.S.C. 694j (now 38 U.S.C. 1820), acquired and later sold to Mr. And Mrs. Russell, who are not veterans, render real property located in North Carolina. As evidence of the various account loan granted those for the purchase of the property, they executed a deed of trust note, dated May 10, 1957, in the amount of $4,890, payable in monthly installments to the Administrator of Veterans Affairs. The note was secured by a deed of trust of the same date executed by the Russells on the said property and the note shows upon its face that it represents the balance of the purchase price thereof.

The Russells defaulted in payment of the monthly installments due on the loan whereupon the Veterans Administration initiated foreclosure proceedings. Based upon an appraisal of the property secured by the Veterans Administration prior to foreclosure, a successful bid of $4,226 was made at the foreclosure sale on behalf of the Administrator. This amount, representing the total proceeds of the sale, was credited to the outstanding loan indebtedness of $4,024.05, including interest and foreclosure costs, resulting in a deficiency of $608.05 is the loan account at the date of the sale. Foreclosure proceedings were completed February 1, 1960. Subsequent credits totaling $5.48 reduced the principal balance due to $602.57. The Veterans Administration did not send a deficiency money judgement.

A member of your staff has specifically called our attention to section 45-21.38 of the General Statutes of North Carolina which provides that in all sale contained in any mortgage or deed of trust executed after February 6, 1933 or where judgement or decree is given for the foreclosure of any mortgage executed after February 6, 1933, to secure payment of the balance of the purchase price of real property, the mortgage or deed of trust shall not be entitled to a deficiency judgement on account of such mortgage, deed of trust or obligation secured by the same.

Since the Veterans Administration's determination of the Russell indebtedness is final and conclusive upon all officers of the Government under 38 U.S.C.

1829(c), formerly 38 U.S.C. 694j(e), we requested their views on the effect of the referred-to State statute in this matter. On November 1, 1960, the General Counsel of the Veterans Administration replied, in part, as follows:

"Since the United States acting through the Administrator of Veterans' Affairs in the acceptance of a promissory note secured by a mortgage or deed of trust as part of the purchase price in the sale of property under the authority of section 509 of the Servicemen's Readjustment Act of 1944, as amended, and in otherwise administering this salvage operation is acting in its governmental capacity pursuant to an Act of Congress, it is the opinion of this office that local state laws cannot operate to preclude, impede, circumscribe, or restrict, the substantive legal rights of the United States to collect the entire amount due from the purchaser, endorsers, assumptiors or other obligors in respect to such loan by denial to the United States of the right to the deficiency existing after foreclosure. United States v. View Crest Garden Apts., 268 F. 2d 380; United States v. Summerlin, 310 U.S. 414, 84 L. ed.1283."

Whether the Department of Justice will institute collection action in this type of case is a matter for its determination.

We trust the foregoing serves the purposes of your inquiry.

Sincerely yours,

Joseph Campbell Comptroller General of the United States