

Opinion No. 57-25

February 14, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Mr. Victor Breen, District Attorney, Tenth Judicial District, Tucumcari, New Mexico

QUESTIONS

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Is the Roy Branch of the Citizens Bank of Springer in Harding County a compulsory depository of Harding County moneys when its main branch, the Citizens Bank of Springer, is considered a bank of Colfax County?

CONCLUSION

Yes.

OPINION

ANALYSIS

There is no question that county funds must be deposited by the county treasurer or board in control in one or more banks within his county, if there are banks qualified to accept the funds under Section 11-2-33, N.M.S.A., 1953 Compilation. Section 11-2-33 states, in part:

"The treasurer of every county, city or town, or board in control, shall deposit the public moneys in one or more banks within his county, which have qualified as depositories thereof under the provisions of this act; Provided, that public moneys so deposited shall be equitably distributed between all of the banks within the county so qualifying, upon the basis of the relative capital stock and surplus of such banks; but when no bank in the county shall have so qualified, or when he shall have in his custody public moneys in excess of the aggregate amount of which banks in his county shall have qualified, such moneys, or such excess, as the case may be, shall be deposited in a duly qualified depository or depositories in some other county in this state."

In the instant situation, it is our understanding at the present time that Harding County funds are deposited in the only banking institution in Harding County, a branch bank, to-wit, the Roy Branch of the Citizens Bank of Springer. The parent bank of the branch, the Citizens Bank of Springer, has its principal place of business in Colfax County. The issue raised by the question submitted would appear to us to be whether a branch bank

shall be considered a "bank" under Section 11-2-33, N.M.S.A., 1953 Compilation, and thus a compulsory depository of Harding County funds.

The section of our statutes applicable to branch banks is Section 48-2-16, N.M.S.A., 1953 Compilation, with this Section allowing duly authorized banks to transact banking business in the State of New Mexico, and to conduct branch or branches thereof within the State. Section 48-2-17, N.M.S.A., 1953 Compilation, states:

"Branches or banks authorized under the provisions hereof shall be authorized to accept deposits, cash checks, buy and sell, exchange, make loans, and do a general banking business."

Section 48-2-19, N.M.S.A., 1953 Compilation, states that prior banking agencies heretofore opened and which were conducting business under Section 50-2-16, N.M.S.A., 1941 Compilation, are hereafter to be conducted and known as branches under Section 48-2-19, N.M.S.A., 1953 Compilation. The above statutes not only allow branch banking, but authorize the branches to accept deposits, cash checks, buy and sell, exchange, make loans, and do a general banking business.

The New Mexico Statutes which authorize branch banking do not, however, define the relations between the parent organization and its branches. We feel that the Roy Branch of the Citizens State Bank of Springer under our Statute is a qualified depository of Harding County moneys. Although the weight of authority for most purposes indicates that branch banks do not have a distinct corporate existence and authority independent of the parent bank, and that a bank and its branches, for most purposes, exist as one corporation, we feel that the branch bank located at Roy, New Mexico, in Harding County, is a compulsory depository of Harding County moneys. Our opinion is based on the expressed language stated in our Statute which allows branch banks to accept deposits, cash checks, buy and sell, exchange, make loans and do a general banking business, Inasmuch as the branch bank is located in Harding County, and has the authority to function as a bank, under Section 11-2-33, N.M.S.A., 1953 Compilation, we believe it to be a qualified depository and a compulsory one.

Trusting that this fully answers your inquiry, we remain