

## **Opinion No. 64-103**

August 4, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Wayne C. Wolf, Assistant Attorney General

**TO:** Patrick F. Hanagan, District Attorney, Fifth Judicial District, Roswell, New Mexico

### **QUESTION**

#### QUESTION

Now that public moneys of the Carlsbad Municipal School District are under the control of the Board of Education for that District, which is the board of finance for the District, are the County Board of Finance and the County Treasurer required to consider school district funds when determining the amount of funds which will be distributed to various depository banks in the county?

#### CONCLUSION

No.

### **OPINION**

#### ANALYSIS

The formula on how much public money shall be deposited with any particular depository bank is set out by statute. Section 11-2-35, N.M.S.A., 1953 Compilation, requires that the public moneys shall be deposited in the several qualifying depositories in the proportion that the amount for which such bank shall have qualified bears to the aggregate amount for which all of the banks shall have so qualified. See also Attorney General's Opinion No. 63-20 which explains the operation of this statutory section in conjunction with the section used in determining the amount of qualification for an individual bank.

Unlike the situation in the past, the county board of finance in your county no longer is responsible for the deposit of municipal school district funds. Since the population of Carlsbad now exceeds 25,000 people, the board of finance for the municipal school district is the board of education for the district rather than the board of county commissioners. The deposit of school district funds is now the responsibility of the board of finance for the school district. See Sections 11-2-4 and 11-2-6, N.M.S.A., 1953 Compilation.

The language used in Section 11-2-35, N.M.S.A., 1953 Compilation is somewhat helpful in determining the answer to your question. The applicable portions of that section read as follows:

"When two or more banks shall qualify . . . as depositories of the public moneys of any county, city or town, or board in control in the state, the **treasurer having the custody of such moneys** shall deposit the same in the several banks so qualifying . . ."  
(Emphasis supplied).

A strict reading of the language just quoted would place the burden of the pro rata deposit on the person having custody of the public money. According to Sections 11-2-4 and 11-2-6, N.M.S.A., 1953 Compilation, as applied to your situation, these persons would be the treasurer of the school board and the county treasurer. It would be practically unworkable for each to consider money in the hands of the other when attempting to make a pro rata deposit in accordance with the provisions of Section 11-2-35.

Likewise, it is evident from the statutory sections cited that control of the various funds of public money is under different boards of finance. Neither board of finance would have authority to control the deposit of money under the supervision of the other board.

Any other interpretation of the statutes in question would necessitate establishing some sort of overall board of equalization which would have the power to equalize the deposit of all public funds within the county.