

## **Opinion No. 64-63**

May 13, 1964

**BY:** OPINION OF EARL E. HARTLEY, Attorney General James V. Noble, Assistant Attorney General

**TO:** Mr. Joseph B. Grant, State Treasurer, State Land Office Building, Santa Fe, New Mexico

### **QUESTION**

#### QUESTIONS

1. May a bank of this state use AA or better obligations of foreign states or political subdivisions of states as collateral security for the deposits of money of political subdivisions of this state?
2. May a bank of this state use AA or better obligations of foreign states or political subdivisions of such state which are being refunded through advance refunding arrangements and payment of which is guaranteed by government obligations escrowed for such purpose in some major bank of this country outside of this state, as collateral security for deposits of political subdivisions of this state?
3. May a bank of this state use Revenue Bonds of the state or its political subdivisions as collateral for state deposits?

#### ANSWERS

1. No.
2. Yes, but see analysis.
3. No.

### **OPINION**

#### ANALYSIS

Our constitution requires that all public moneys not invested in interest bearing securities shall be deposited in National Banks of this state or in banks or trust companies incorporated under the laws of this state. Section 11-2-6, N.M.S.A., 1953 Compilation (P.S.) provides for the boards in control, except for local boards of education, to act as boards of finance and sets forth the general requirement for deposits of its moneys of such subdivision. The act also provides a method by which local boards of education may qualify as boards of finance.

The section above cited reads in part as follows:

"Each of such boards shall receive, handle and account, as provided by law, for all public moneys received by it, and shall deposit the funds of such institutions or boards in a **depository or depositories qualified** in accordance with the requirements of this act (11-2-4 to 11-2-7, 11-2-19, 11-2-20, 11-2-51), equitably and upon the terms and **conditions** and in like manner and **subject to such limitations** as in this act prescribed for the deposit of public moneys by other boards of finance." (Emphasis added)

The sections cited in the above section provide for the management of such boards of finance, and Section 11-2-7, N.M.S.A., 1953 Compilation, provides that deposits of public moneys shall be made in properly designated or certified banks. A portion of this section deals with investment of sinking funds or unexpended proceeds from the issue of bonds or other securities and is not in point here.

Section 11-2-19 and 11-2-20, N.M.S.A., 1953 Compilation relates to the assignment of securities held by a designated depository to the particular board of finance whose deposits are being secured and provides that no bond with personal sureties should be considered acceptable for such security. (The form of the assignment and transfer and receipt for such security is set forth.) Other laws relating to deposits of public moneys call for an equitable distribution of deposits. Sections 11-2-17 and 11-2-18, N.M.S.A., 1953 Compilation provide that no public moneys shall be deposited in any bank until it is designated as a qualified depository and then only to the extent of the penal amount of the bond or bonds or value of the securities given to secure the deposits. The sections require that such deposits shall be secured by a surety bond or bonds running to State of New Mexico and approved by the appropriate board of finance and the district judge and executed by a surety company authorized to do business in this state or by deposits of securities meeting statutory qualifications.

Your questions do not relate to the posting of a bond but only to the deposit of securities to secure public deposits. Section 11-2-18, supra, sets forth the types of securities that may be deposited and are listed as follows:

1. United States Bonds.
2. Bonds of Home Owners Loan Corporation.
3. Federal Farm Loan Bonds.
4. Bonds or Securities guaranteed by the United States.
5. Bonds of the State of New Mexico.
6. Debentures issued by the State Highway Commission of the State of New Mexico (under certain specified conditions).

7. Bonds of any county of this State on which all interest due has been paid for five years immediately preceding the acceptance of security.

8. Bonds of any legal subdivision of a county of this State including drainage or irrigation districts, on which all interest has been paid for five years immediately preceding the acceptance as security.

Such securities, when properly approved and in the proper amount shall be assigned to the State of New Mexico and shall be delivered to the appropriate finance board. Sections 11-2-18 and 11-2-19, supra. Such securities may be deposited in another bank for safe keeping by the depositing finance board.

There is no authority under our laws for obligations of foreign states or subdivisions thereof to be pledged as collateral for deposits of public money. Absent such authorization such obligations may not be so pledged and deposits of public moneys cannot be so secured.

Your second question involves out-of-state refunding obligations guaranteed by the United States which are escrowed in major banking institutions over the nation. Under proper circumstances such obligations could be so accepted. It is doubtful, however, that proper circumstances and conditions could be met. The securities would have to be assigned to the State of New Mexico and transferred to the appropriate board of finance. The U.S. guarantee would in each case have to be examined and determined to be satisfactory and adequate insofar as statutory requirements are concerned, including the sale of securities upon default.

Thirdly you ask whether the state may accept revenue bonds of the State of New Mexico and its political subdivisions as collateral security for state deposits.

Although Section 11-2-18, supra, refers to bonds or securities of political subdivisions of this state, it is apparent that the bonds and obligations referred to are general obligation bonds of the county or subdivision and not revenue bonds. The reasoning set forth in Attorney General Opinion 1959-1960, No. 204 at Page 616 is applicable. Although, that opinion dealt with investments in revenue bonds rather than accepting Revenue Bonds as collateral security for deposits, the principle is the same, particularly when the five year requirement of interest payments is considered. Revenue bonds of subdivisions of the state may not be considered as adequate collateral security for deposits of state money.

Insofar as bonds of the State of New Mexico are concerned, with the exception of debentures of the State Highway Commission, only general obligation bonds may be used as security for deposits of public moneys, insofar, as any applicable general statutes are concerned. Special statutes, such as the Supreme Court Building Act may permit debentures of other departments or agencies to be accepted as security for such deposits.

Debentures of the State Highway Commission issued pursuant to legislative authority to anticipate the revenues to be derived from the collection of any or all gasoline excise taxes, motor vehicle registration fees and property and other taxes, where it is provided by law that the proceeds of the collection of such fees and taxes to the extent sufficient to pay the principal and interest of such highway debentures shall have been pledged for the payment of the same, may be accepted as collateral security for such deposits.

With the exception of such highway commission debenture, only general obligation bonds of the State of New Mexico, or its subdivisions may be pledged as collateral security for deposits of public money, insofar, as any general statutes are concerned.

Opinion of the Attorney General No. 5098, 1947-48 appearing at page 106, reaching a different conclusion is hereby overruled.