

Opinion No. 67-05

January 11, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Luis L. Fernandez, Chief Local Government Division Department of Finance & Administration 139 E. De Vargas Santa Fe, New Mexico

QUESTIONS

1. How much collateral must the recipient bank post?
2. Is this a legal method of safeguarding the securities posted as collateral?

CONCLUSIONS

1. An amount equal to no less than one hundred percent of the deposit.
2. Yes.

FACTS

A county treasurer possesses public moneys in the county general fund. He deposits them in a bank. The bank posts collateral in securities for the received amount. The treasurer deposits the securities with another bank for safekeeping. This bank gives the treasurer certificates of safekeeping in return. The treasurer must sign a receipt for any of the securities to be withdrawn.

OPINION

{*7} The answer to your first question involves an interpretation of Section 11-2-18 (B) New Mexico Statutes Annotated, 1953 Compilation. It reads in pertinent part:

"Any bank designated as a depository of public moneys may deliver securities of the kind above specified to the board of finance of the state, or of the county, city, town or board in control, whose moneys it is desired to receive and hold on deposit, of **an aggregate market value equal to the amount of public moneys said bank desires to receive on deposit. . . .**" (Emphasis added.)

This subsection is generally interpreted to mean that the bank must post collateral equal to one hundred percent of the money deposited by the county. The Board of Finance may request that additional security be posted, Section 11-2-21 N.M.S.A., 1953 Compilation. In order to be fully protected in safekeeping the securities, State Board of Finance requirements should be satisfied by the party holding the bonds in custody, Sections 11-2-22 and 11-2-23 N.M.S.A., 1953 Compilation.

The county treasurer is responsible for holding the securities posted by the bank, Section 11-2-18 (B), supra. The securities may be kept in any Federal Reserve Bank or branch thereof or in any other bank outside the boundaries of this state so long as the interests of the county are protected, Section 11-2-22 N.M.S.A., 1953 Compilation. The State Board of Finance is authorized to regulate the safekeeping of these securities.

Therefore, the method of safeguarding securities set out under Question 2 is valid.

By: Donald W. Miller

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