

## **Opinion No. 82-23**

November 15, 1982

**OPINION OF:** Jeff Bingaman, Attorney General

**BY:** Jill Z. Cooper, Deputy Attorney General

**TO:** Albert Romero, Director, Local Government Division, Department of Finance and Administration, Lamy Building, Santa Fe, New Mexico 87501

### **PUBLIC FINANCES**

If a unit of local government places money in any interest-bearing account in a bank or savings and loan association, it does so subject to the equalization requirements of Section 6-20-36(c) NMSA 1978.

### **FACTS**

Section 706 (a) of the Garn-St. Germain Depository Institutions Act of 1982 has amended 12 U.S.C. 1832 (a) (2) to permit banks and savings and loan associations to accept "deposits of public funds by an officer, employee, or agent of the United States, any state, county, municipality or political subdivision thereof, . . ." in interest-bearing checking accounts.

### **QUESTIONS**

Would deposits of public funds by units of non-home rule local government in interest-bearing checking accounts be subject to the distribution requirements of Section 6-10-36 (C) NMSA 1978?

### **CONCLUSIONS**

Yes.

### **ANALYSIS**

Pursuant to Section 6-10-36 NMSA 1978, units of non-home rule local government are authorized both to deposit public funds in "non-interest-bearing checking accounts" and to place public funds in "interest-bearing deposits". When funds are placed in interest-bearing deposits, they must "be equitably distributed among all banks and savings and loan associations having their main or manned branch offices within the geographic boundaries of the government unit . . . ." Section 6-10-36(C).

Although Section 6-10-36 apparently did not contemplate the change in federal law which would allow the deposit of public funds in interest-bearing checking accounts

(e.g., NOW accounts), the words used in that statute are clear and unambiguous and must be given effect as written. **See, e.g., Perea v. Baca**, 94 N.M. 624, 614 P.2d 541 (1980). If a unit of local government places money in any interest-bearing account in a bank or savings and loan association, it does so subject to the equalization requirements of Section 6-10-36 (C) as well as the other state statutes governing the deposit of public money in interest-bearing accounts. Until otherwise determined by the legislature, an interest-bearing checking account is not exempt from that requirement.

## **ATTORNEY GENERAL**

Jeff Bingaman, Attorney General