

Opinion No. 12-869

February 1, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. Robert P. Ervien, Commissioner of Public Lands, Santa Fe, New Mexico.

STATE OR COUNTY FUNDS.

State or county funds should be deposited in banks doing business in New Mexico.

OPINION

{*9} I have before me your letter of the 31st ult. in which you ask whether it is lawful for a state or county officer, holding and handling state or county funds, to deposit the same in a national bank doing business beyond the jurisdiction of the State of New Mexico, with particular reference to your office and county treasurers.

As to funds under the control of any state officer, there can be no doubt that they cannot properly be deposited in any bank outside of the state, with the exception of money needed to pay interest on bond issues where the interest is made payable at some specified bank elsewhere than in New Mexico. This is made perfectly plain by Chapter 3 of the Laws of 1907, which is an amendment to Section 255 of the Compiled Laws of 1897. That Section 255 is the one which provides for the deposit of territorial moneys in "any bank on this territory incorporated under the laws thereof, or under the laws of the United States," and by way of addition thereto, declares that no territorial funds, nor those of any territorial institution, shall be deposited elsewhere than in a bank or banks of the character therein described. The banks described in that section must be in the territory.

As to the deposit of county moneys, the statutes are not so explicit. The earliest act on the subject is to be found embodied in Section 746 of the Compiled Laws of 1897, which requires the treasurer, among other things, to keep the books, papers and moneys pertaining to the county treasury ready for inspection of the county commissioners. This would seem to indicate that the money must be kept at hand ready for inspection at any time. Section 3 of Chapter 122 of the Laws of 1909 requires county treasurers "to designate one or more banks authorized to do business under the laws of the Territory of New Mexico, or under the laws of the United States, as a depository or depositories for the deposit and safe-keeping of all funds coming into their hands as such treasurer." It is {*10} perfectly clear that banks authorized to do business under the laws of the territory must be doing business within the territory, but a literal construction of the clause "or under the laws of the United States," might mean any national bank throughout the whole United States, and would enable a county treasurer, if so disposed, to deposit his moneys in a national bank as far away as Eastport in the State of Maine. It is not reasonable to believe that the legislature could have thus intended,

and taking this in connection with the declared legislative policy as to territorial moneys, leads me to the conclusion that a county treasurer would not be justified in putting the funds under his control in any bank beyond the jurisdiction of the officers and courts of the State of New Mexico. If he did so, it might lead to the necessity of our state going into the courts of some other state to sue for the recovery of the county money which had been taken beyond our geographical limits, and it is not reasonable to believe that the legislature could ever have intended to bring about such an undesirable state of affairs.

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