

Opinion No. 19-2443

December 5, 1919

BY: HARRY S. BOWMAN, Assistant Attorney General

TO: Mr. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Deposit School Funds in Qualified Depository.

OPINION

Referring to your letter of the first instant, enclosing correspondence with J. Simpson Morgan, County Treasurer of Curry County, in regard to the demand made by the County Board of Education upon the Treasurer to deposit the rural school funds of that county in a bank designated by the said county board, wish to advise you as follows:

The provisions of section 5, Chap. 105, Laws 1917, grant to the County Board of Education "full power and control over all rural schools and districts and the funds thereof" which language would seem to indicate that it was the intention that County Boards of Education should be unlimited and unrestricted in their control of the property and funds of the schools and school districts, and standing alone would probably justify the action of the County Board of Education of Curry County in its order to the treasurer above mentioned.

Reading this section, however, in connection with the entire chapter, we are impressed with the soundness of your suggestion to the writer that the disposition of the funds rather than their safe-keeping is the purpose of the act insofar as it applies to school funds. This, together with the fact that there is no provision in the act creating machinery for the designation of depositories for school funds by the County Board of Education, and in further consideration of Chapter 57, Laws 1915, wherein the Board of County Commissioners is constituted as a County Board of Finance and is required to designate depositories for public moneys, and in further consideration of the fact that public depositories are permitted to have only a certain amount of public moneys in proportion to the capital and surplus of the depository, and that the depository is required to give a bond in an amount equal to the public moneys which it receives and as the County Board would have no information as to whether the said depository had qualified as a public depository or whether it had received its full quota of public funds, we are of the opinion that the County Board is not authorized to designate the depository for the school funds of the district, but that such power rests with the County Board of Finance and the County Treasurer, and we are therefore of the opinion that your action in advising the treasurer of Curry county to refuse the demand made by the County Board of Education was proper.

We are returning herewith the papers received with your letter.