Opinion No. 22-3228

January 14, 1922

BY: HARRY S. BOWMAN, Attorney General

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

Deposits of Excess Public Funds in Public Depositories.

OPINION

*{*108}* Because of illness and also due to the fact that I desired to give the matter very careful and thorough consideration, I have not replied more promptly to your letter of December 24th enclosing one from County Treasurer Oscar B. Wood of Dona Ana County, regarding the deposit of excess funds belonging to the county during the period of collection of taxes in that county.

It appears that the banks which have qualified as public depositories in Dona Ana County have received the full amount of county funds to which they are entitled under the Public Depositories Act, Chapter 57, Laws 1915, as amended by Chapter 70, Laws 1917.

It also appears that owing to the short time such moneys will remain in the depository, no banks outside of the county are willing to qualify as depositories for such funds. The question then arises as to what disposition should be made thereof during the period in which the said funds are in the hands of the county treasurer.

*{*109}* You ask if the funds may be deposited in a bank and a surety bond given, the premium to be paid out of other county funds, and if such an arrangement would not be possible, if the treasurer should place such moneys in his official vault.

I do not believe that either one of the methods of procedure mentioned would be either legal or advisable.

There is no law which would authorize a county to pay for a depository bond in order to protect its funds deposited in a bank, although there are laws which authorize expenditure of public moneys for the payment of premiums upon official bonds.

Nor would it be considered proper or legal for the treasurer to retain the funds in his vaults. Loss of such funds which might result could be charged to the treasurer and the sureties upon his official bond.

There are two possible plans which suggest themselves to me. First, that during the period mentioned, the treasurer might make daily remittances to the state treasurer for the amount of state taxes included in the collection and possibly in this manner keep the deposit within the amount for which the county depositories have qualified. Of course, this would entail some additional work upon the part of the treasurer, but, at the same time, it would obviate any possibility of loss of the funds through any negligence or act of his. Second, if there are still excess funds in the hands of the treasurer after the remittances mentioned, he might select one of the strong banks of the state, such as the First National of Albuquerque, Santa Fe or Las Vegas, and deposit such funds in such bank without requiring any depository bond from such institution. This, of course, is not legal, but in view of the financial stability of these institutions, it is almost impossible for loss to occur.

The foregoing are the only two possible methods of procedure that, to my mind, would be considered in the least feasible under the circumstances mentioned.

I beg to return herewith Mr. Wood's letter and copy of your answer thereto.