

## Opinion No. 25-3862

October 13, 1925

**BY:** JAMES N. BUJAC, Assistant Attorney General

**TO:** Requested October 2, 1925, by Hon. R. H. Carter, State Comptroller, Santa Fe, New Mexico.

Any bank authorized to receive public monies must file its written proposal to receive such monies on deposit, together with its agreement to pay interest on daily balances as a condition precedent to being qualified and designated as a depository for public monies.

### OPINION

Your request is as follows:

"The State Comptroller has taken the position that no Bank in this State and under our present statutes is or can be a properly qualified and authorized depository of or for public monies unless or until such Bank shall have filed its 'written proposal to receive such monies on deposit, together with its agreement to pay interest on daily balances of such monies so deposited at the rate of one and one-half (1 1/2) per cent per annum.'

Please advise me if, in your opinion, the public monies Act or other statutes of the State will sustain me in this position."

The third paragraph of Section 3, Chapter 123, Session Laws of 1925, reads as follows:

"Any bank authorized to receive public monies may file with the board of finance having control of any such monies, a deposit of which is desired by said bank, its written proposal to receive such monies on deposit, together with its agreement to pay interest on daily balances of such monies so deposited at a rate of one and one-half (1 1/2) per cent per annum. Said proposal shall specify whether said deposit is desired as a time deposit. Such board of finance shall, at its next meeting after the receipt of such proposal open and consider the same, and if the same is found to be in accordance with the provisions of the Act, shall thereupon notify such bank that upon its furnishing a bond or bonds or other security as provided in this Act, it will be designated as a depository of such monies in an amount to be fixed by said board, which amount, however, shall not exceed seventy-five per cent of the capital and surplus of such bank so applying to be designated as a depository of public monies if said deposit is to be secured by surety bond; and, upon the furnishing of such bond or bonds or other security authorized by this Act, a certificate shall be issued to such bank by said board to the effect that such bank has qualified as a depository of public monies'."

After a careful perusal of the above quoted section it seems that it is necessary for a bank authorized to receive public monies to file its written proposal to receive such monies on deposit, together with its agreement to pay interest on daily balances as set out above before any board of Finance can take any action in the matter, or the bank be qualified or designated as a depository for public monies.