

Opinion No. [29-60]

December 5, 1929

TO: Office of the Attorney General of New Mexico

PUBLIC MONIES -- Banks qualifying as depositories must deliver securities.

OPINION

In yours of the 4th inst. directed to this office, you call attention to Section 2, Chapter 123 of the Session Laws of 1925, and the provisions therein made for the securing of deposits of public monies. You call attention to a situation in San Juan County in which you say that the Citizens' Bank of Aztec, after having qualified as a depository for the County of San Juan, deposited the collateral securities with the United States National Bank of Denver, accepted from that bank a non-negotiable receipt for such securities and deposited the duplicate with the County Treasurer. You ask to be advised whether this is a compliance with the requirements of Section 2, Chapter 123, Laws of 1925, upon the part of the Citizens' Bank of Aztec.

You are apparently familiar with the statute to which you refer. Section 2 of Chapter 123, Session Laws of 1925, is an amendment of Section 9, Chapter 76 of the Session Laws of 1923. In this section, bonds and obligations which may be received as security for the deposit of public monies are listed and the statute provides for the deposit of such securities after their approval as follows:

"Securities so delivered as security for the State monies shall be deposited with and held by the State Treasurer, after their approval by the State Board of Finance, and securities so delivered as security for the monies of any county, city, town or board of control shall, after the approval thereof by the proper finance board, be delivered to and held by the Secretary of such board."

The legislature having designated the depository, I am of the opinion that there is no authority for any other to act in such capacity. It probably was the intent of the legislature that this collateral should be so held as to be available, should it become necessary to resort thereto to recover funds deposited, which may have been lost or misappropriated by the bank receiving such deposit. Securities held in another state would probably not be so available.

Section 8 of Chapter 76 of the Session Laws of 1923, as amended by Section 1, Chapter 123, Laws of 1925, reads in part as follows:

"Ses. 8. No public monies in the custody of the State Treasurer or the Treasurer of any county, city, or town in this State, or in the custody of any board in control mentioned in Section 6 hereof, shall be deposited in any bank (except as otherwise herein provided)

until such bank is qualified to receive deposits of public monies by depositing collateral security or by giving bond, as provided by this Act."

I am of the opinion that until the Citizens' Bank of Aztec shall have deposited the collateral security approved, as required by the statute, public monies should not be deposited in such bank.