

## Opinion No. [29-67]

April 18, 1929

**BY:** M. A. OTERO, JR., Attorney General

**TO:** Mr. J. Benson Newell, District Attorney, Las Cruces, New Mexico.

PUBLIC MONIES -- Amount for which bank may qualify.

### OPINION

When you were in Santa Fe recently you asked me to give you an opinion as to the amount a local bank could legally qualify for as a depository for county funds.

So far as I can find there is no court decision in this state on this matter.

The two provisions of the statute in question are contained in the same act. Hence, if they are in conflict, neither can be held to repeal the other by implication, and it therefore all depends upon whether there is a real conflict.

Said section 3, chapter 123, Laws of 1925, after directing how a bank may make application to be designated as a depository, says:

"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 this 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."

A portion of section 2 of said Act reads as follows:

"Deposits of public moneys may be secured by bonds or Treasury Certificates of the United States, bonds of the State of New Mexico, bonds of any county of this State, or any of the legal subdivisions thereof, including drainage or irrigation district bonds on which all interest due has been paid for the five years immediately preceding the acceptance thereof as security for any deposit, and Federal Farm Loan bonds."

Then said section 2 provides further:

"No deposit of public money secured by the deposit of securities in this section provided shall exceed the actual market value of the securities so deposited, ascertained in the manner above specified, **but no other limitation of amount shall be applicable to deposits so secured.**"

It would therefore clearly appear that the limitation of seventy-five per cent of the capital and surplus of such depository bank can only apply where a surety bond only is offered as security, but that where securities such as are mentioned in said section 2, above quoted, are offered, then, under the provision of the last portion of said section 2, above quoted, the only limitation of the amount would be the market value of such securities offered as determined by the provisions of such section 2.

There is, therefore, no conflict between the said sections.

Trusting that the foregoing gives you the information you desire, I am