

## Opinion No. 31-292

October 9, 1931

**BY:** E. K. Neumann, Attorney General

**TO:** Honorable John Bingham, State Bank Examiner, Santa Fe, New Mexico.

{\*111} This is in answer to your inquiry concerning the scope and meaning of {\*112} the words "general deposits" as used in Section 13-128 of the 1929 Code. You especially wish to know if these words include public moneys deposited in a legally qualified depository for which securities have been pledged for the safe keeping of said moneys.

The words "general deposits" as used in their usual and ordinary sense, would in my opinion include public moneys deposited as aforesaid. The following are some of the definitions of the term "general deposit", as defined by the courts of other states:

"A 'general deposit' is payment of money into a bank to be repaid on demand, and creates between bank and depositor relation of debtor and creditor, the money passing to the bank and being mingled with its general funds from which depositors are paid. Corporation Commission of North Carolina v. Merchants' Bank & Trust Co., 138 S. E. 22, 24, 193 N. C. 696."

"A 'general deposit' is one generally to the credit of a depositor, to be drawn upon by him in the usual course of the banking business, and creates the relation of debtor and creditor between the bank and himself, and the money deposited is mingled with other funds of the bank and becomes the property of the latter; it not being contemplated that the identical money deposited is to be returned. Tyler County State Bank v. Phodes (Tex.) 256 S. W. 947, 949."

"There are but two kinds of deposits -- those where bank becomes trustee for depositor, by special agreement or through circumstances sufficient to create trust, and deposits made in absence of such contract or circumstances, called 'general deposits,' where bank merely becomes debtor of depositor. Pethy-bridge v. First State Bank, of Livingston, 243 P. 569, 571, 75 Mont. 173."

The question may be considered as to whether or not the legislature in enacting Section 13-128, supra, intended to use the words "general deposits" in this broad and general sense. Various reasons might be advanced to show that the legislature did not intend to include public moneys deposited as above stated within the meaning of this Act. In the Case of Lovett v. Lankford, 145 P. 767, 771, 47 Okl. 12, it was held that

"Deposits of a county, made pursuant to Rev. Laws 1910, Sec. 1540, providing for ample security and directing them to be made under strict legislative safeguards, do not come within the meaning of a 'general deposit', protected by the depositors' guaranty fund, created pursuant to section 298 et seq."

The question presented in the Lovett case is similar to the case presented here, but it is not exactly the same.

While there may be sound arguments to the effect that the words "general deposits" as used in Section 13-128 does not include public moneys deposited as aforesaid, I am of the opinion that in the operation of your department you should give said words their ordinary and general meaning as above pointed out, and that in determining the amount of reserve to be kept on hand by banks in this state you should include in your computation of public moneys on deposit in said banks whether secured by negotiable securities or not.

By Quincy D. Adams,

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