

## Opinion No. 32-458

May 5, 1932

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

**TO:** Hon. Warren R. Graham, State Treasurer, Santa Fe, New Mexico.

{\*161} Your letter of April 1st, 1932, regarding certain provisions of the Public Moneys Act, has been received.

You desire to know, first, if the State Fiscal Agent Bank can be required to furnish security over and above that provided by law, which under Section 112-110 New Mexico Statutes, Annotated, 1929 Compilation is fixed at \$ 250,000.00

In answering your question a distinction must be drawn between the "Fiscal Agent Account" and the ordinary "Depository Account". In our opinion the said Section 112-110 only has application to the "Fiscal Agent Account" and, so far as this act is concerned, the amount of security is fixed at an arbitrary amount of \$ 250,000.00 and we do not believe that this can be increased.

By Section 8 of Chapter 125, Laws of 1925, and now cited as Section 112-121 of the 1929 Compilation, we find the following provision was made.

"Any board of finance may at any time within its discretion require any bank which has qualified as a depository of public moneys subject to the control of said board, and including banks which have furnished bonds with personal securities, and which may be continued for a period of one year as specified in Section 19 (112-119) hereof, to furnish additional security for said deposit of the kind in this act specified."

Apparently, under this section, the legislature had in mind the ordinary "Depository Account" and in order to meet just such instance as you mention in your letter we believe the State Board of Finance, with respect to such accounts, may properly require additional security to meet these conditions.

We might also add that Section 112-110 provides "nothing herein contained shall prevent the bank so designated as fiscal agent from also qualifying as a state depository under any provisions of this act." Therefore, if the "Fiscal Agent Bank" does so qualify as a "State Depository", then such additional security may be required.

You also request our interpretation of that portion of Section 112-110 of the 1929 Compilation which provides that "not more than 20% of all moneys of the state on hand shall be on deposit in all such checking accounts and the checking account with the Fiscal Agency for a time longer than may be required to distribute the moneys in excess of such percentage to qualified depository banks applying therefor."

In our opinion this must be strictly construed, it being, no doubt, to place a limitation upon the state's checking accounts in order that the major portion of the finances of the state could find its way into the regularly qualified state depositories.

To meet this condition, we refer you to Section 112-126, which provides that when "the state treasurer . . . shall have on hand more money than can be divided equitably and **ratably** between depositories, . . . such treasurer may, with the approval of the proper board of finance, (in this instance the State Board of Finance) temporarily invest such excess funds in United <sup>{\*162}</sup> States Bonds or treasury certificates, under such rules and regulations as may be prescribed by the State Board of Finance.

It is our opinion that adherence to the foregoing will, in a measure at least, tend to solve your difficulty.

Your attention is directed to our letters of April 2nd and April 21st, 1932 on this subject and this letter includes all we said in said letters and is intended to take the place of same, and this letter is for the purpose of including the contents of the two former letters in this one letter.

By Frank H. Patton,

Asst. Attorney General