

Opinion No. 57-217

August 28, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,
Assistant Attorney General

TO: Mr. Joseph B. Grant, State Treasurer, Santa Fe, New Mexico

QUESTION

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Do the provisions of § 11-2-22, N.M.S.A., 1953 prohibit the State Board of Finance from designating a bank within this State as a depository for the safekeeping of bonds or other securities delivered by any bank or banks as security for deposits of public moneys? If not, are there any other provisions in the law which would prohibit this practice?

CONCLUSION

No.

OPINION

ANALYSIS

Section 11-2-22, N.M.S.A., 1953, provides:

"The state board of finance is hereby authorized and directed to regulate, by general regulation or by special orders applicable to individual cases, the safe-keeping of bonds or other securities delivered by any bank or banks as security for deposits of public moneys, and said board may authorize such bonds or securities to be kept in any federal reserve bank or branch thereof, or in any other bank outside the boundaries of this state, on such conditions as will adequately protect the interests of the state, county, city, school district, or institution interested in said bonds and securities."

It is noted that the statute specifically authorizes the State Board of Finance to designate Federal Reserve Banks, branches thereof and banks outside this State as depositories for the safekeeping of bonds and securities securing deposits of public moneys. The statute is silent on the power of the State Board of Finance to designate banks within the State as such depositories. The question then arises whether the specific enumeration negates authority to designate other than those enumerated.

Ordinarily, where such an enumeration exists in a statute, there is, by implication, an exclusion of those items, things or subjects not enumerated. However, this rule of

statutory construction is not inflexible. Where reason indicates a legislative intent at variance with the rule, the rule does not apply. And we think this to be the situation here. We reason thus: The State Board of Finance is given the broad power to regulate the safekeeping of these bonds and securities. In the absence of the provision enumerating Federal Reserve and out of state banks, there would be no doubt whatsoever that in-state banks could be designated depositories for these bonds and securities. As a matter of fact, if the enumeration were not in the statute, there would exist the gravest doubt that out of state banks could be designated. It is this doubt which we believe prompted the Legislature to specifically name them as eligible depositories. And we do not think that the legislative effort in alleviating this doubt had the effect also of excluding in-state banks from eligibility to serve as depositories.