

Opinion No. 58-127

June 13, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Alfred P. Whittaker,
Assistant Attorney General

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

QUESTION

QUESTION

May moneys of the Judges' Retirement Fund not required to be disbursed under the Retirement Act be invested by the State Treasurer in Time Deposit Certificates of a National Bank, which is an official State Depository, and which secures the amount of such deposit by securities as provided by statute?

CONCLUSION

Yes.

OPINION

ANALYSIS

The Constitution of New Mexico provides in relevant part in Article VIII, Section 4:

"All public moneys not invested in interest-bearing securities shall be deposited in national banks in this state or in banks or trust companies incorporated under the laws of the state, and the interest derived therefrom shall be applied in the manner prescribed by law."

The Judges' Retirement Fund to which your question relates was created by Laws of 1947, Chapter 132, now compiled as Sections 5-5-24 through 5-5-28 (N.M.S.A., 1953). Section 5-5-25, as amended by Laws of 1957, Chapter 198, Section 1, provides for the payment of a portion of all docket fees into this fund, and for the ultimate custody of such moneys by the State Treasurer, who is to hold the same as a separate fund. The Treasurer's investment authority as to moneys of the fund is then provided for as follows:

"Any portion of said 'Judges' Retirement Fund' not required to be disbursed as herein provided may be invested by the State Treasurer as other funds of the state of New Mexico are invested."

One other statutory provision requires consideration. Section 1 of Chapter 140, Laws of 1955, compiled as Section 11-2-25.1, provides as follows:

"All moneys of the state of New Mexico, except permanent funds and income derived therefrom, not needed to meet expenses of state government for the ensuing quarter year should be invested in interest bearing time deposits or short term United States government securities. No funds other than those necessary to meet such expenses should be permitted to remain in noninterest bearing accounts in state depositories."

Under the Constitutional provision quoted, it is clear that the Treasurer has authority to invest public moneys in interest-bearing securities, and also has authority to deposit such moneys in banks as stated. It might appear from superficial examination that there is a distinction between such investment and deposit. Consideration of the statutes cited however, requires the conclusion that the Treasurer may lawfully invest moneys of the fund in a Time Deposit Certificate as stated in the inquiry. The deposit described in the opinion request would be a secured obligation under the terms of the law (Sec. 11-2-18). Thus, it will in fact be an investment as contemplated by the constitutional provision cited. And the 1955 statute cited clearly evidences the legislative intention that all public moneys not currently required to meet expenses should be invested in interest-bearing time deposits or government securities, as well as the intention that no funds should be held idle other than funds needed for current expenses.

We, therefore, conclude that Section 5-5-25 as amended, authorizes the proposed investment described in the opinion request.