

Opinion No. 62-09

January 19, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

TO: Mr. Abner Schreiber, Assistant District Attorney, P. O. Box 800, Los Alamos, New Mexico

QUESTION

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May Los Alamos County deposit its cemetery funds in a federally insured savings and loan association?

CONCLUSION

No.

OPINION

ANALYSIS

Article VIII, § 4 of our Constitution provides in pertinent part:

". . . 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 . . ."

If the funds to which you refer are "public moneys", they must be invested or deposited according to the foregoing Constitutional requirement.

Although many definitions of the term "public moneys" may be found, the generally accepted concept is described by the Court in **Storen v. Sexton**, 209 Ind. 589, 200 N.E. 251 as:

". . . all funds impressed with a public interest, that is, funds raised by general taxation, or special levies upon special assessment districts, or the income from publicly owned properties, or funds arising from private sources in the hands of public officers which are designed for public use . . ."

In Attorney General's Opinion No. 5859, dated December 3, 1953, we held that:

". . . irrespective of whether the Village of Ruidoso, in operating a water works, is operating in a governmental or proprietary capacity, it is nonetheless operating the water works for the benefit of the public and the revenues derived therefrom are for the public uses . . ."

It is clear from your statement of the facts that the cemetery involved is operated by the County of Los Alamos for the benefit of the public, and we can conclude only that the funds derived therefrom, or appropriated thereto, are public funds.

While the Constitution does not define "banks" or "trust companies", the Legislature has defined them. Banks are, according to § 48-1-2, N.M.S.A., 1953 Comp., of three classifications: (1) commercial; (2) savings, and (3) trust companies. Section 48-1-3 provides for the formation of these types of banking concerns. Mutual savings and loan associations are formed under the provisions of § 48-15-1 et seq., while capital stock savings and loan associations are chartered under the provisions of § 48-15-26 et seq., N.M.S.A., 1953 Comp. (PS). The Legislature has thus made savings and loan associations financial institutions of a type other than banks. Other jurisdictions have held that savings and loan associations are not banks (**North Arlington National Bank v. Kearney Federal Savings and Loan Association**, C.A.N.J. 1951, 187 F.2d 564, certiorari denied 342 U.S. 816; **State ex rel Clearly et al v. Hopkins Street Building and Loan Association**, 217 Wis. 179, 257 N.W. 684).

Although it is true that savings and loan associations perform some of the traditional functions of commercial and savings banks, we must conclude that a savings and loan association is not a "bank" under our law, and a county may not place its public funds in such an institution.

Section 11-2-7, N.M.S.A., 1953 Comp., allows a county, where it has funds not immediately necessary for the public use, to invest such funds in "bonds or negotiable securities of the United States of America, the State of New Mexico, or of any county, city, town or school district . . ."

A savings and loan association, not being a bank, and a deposit or purchase of investment shares in such an institution not being one of the permissible investments of surplus county funds, we conclude that the county may not deposit or invest any of its funds in such an institution.