

Opinion No. 63-135

October 4, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Alfonso G. Sanchez District Attorney First Judicial District Santa Fe, New Mexico

QUESTION

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1. Is a branch bank which is located within Los Alamos County a compulsory depository of County funds when a local bank has been established and qualified by the Los Alamos Board of County Commissioners?

CONCLUSION

1. Yes.

OPINION

{*299} ANALYSIS

The question presented herein is similar to that answered by Attorney General Opinion No. 57-25. However, in that instance no consideration was given to the situation where a qualified branch bank was being used as the sole depository at the time of the establishment and qualification of a local bank. Thus, we intend by this opinion to supplement what was in said Attorney General Opinion No. 57-25.

The applicable statute, viz., Section 11-2-33, N.M.S.A., 1953 Compilation, makes no differentiation between branch and local banks upon any basis. It simply commands that:

{*300} "The treasurer of every county, city or town, or board in control, shall deposit the public moneys in **one or more** banks within his county, **which have qualified as depositories thereof** under the provisions of this act. . . ." (Emphasis added.)

A reasonable interpretation of the above would be that all qualifying banks within the county were intended to be treated alike with respect to utilizing them as depositories once qualified. This is so of course, provided that one accepts the construction of the word "banks," used in the statute, to include branch banks. The aforementioned Attorney General Opinion 57-25 contains an extensive discussion regarding this point, and we are in accord therewith.

The fact that a qualified local bank now exists in Los Alamos County, we believe, does not affect the status obtained by the branch bank as a qualified and thus **compulsory** depository of the County funds. However, since there are now two qualified banks in that county the public moneys thereof must be equitably distributed between them in accordance with Section 11-2-33 and Section 11-2-35, N.M.S.A., 1953 Compilation (P.S.). In this regard please refer to Attorney General Opinions Nos. 62-71 and 63-20.

We call to your attention Section 48-22-51, N.M.S.A., 1953 Compilation (P.S.) which was enacted in 1963 and is related to the above. It reads as follows:

"County with branch bank -- When a bank is organized in a county which has a branch of another bank, the main office of which is another county, the branch may remain and continue to do business, but no other branch of any other bank having its main office outside the county shall thereafter be authorized to do business in that county."

By: Frank Bachicha, Jr.

Assistant Attorney General