

## Opinion No. 63-20

March 19, 1963

**BY:** OPINION of EARL E. HARTLEY, Attorney General

**TO:** Raymond H. Keithly District Attorney Third Judicial District Truth or Consequences, New Mexico

### QUESTION

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1. Are two "branches" of banks incorporated within this state proper depositories for public funds?
2. What is the proper formula to be used by the county treasurer in determining the equitable distribution of deposits of public funds in the event both branch banks qualify as depositories?

#### CONCLUSIONS

1. Yes, providing the banks qualify under the terms of Section 11-2-33, N.M.S.A., 1953 Compilation.
2. See analysis.

### OPINION

#### {\*42} ANALYSIS

1. The "Branch" of a bank incorporated within this state is a proper depository for public funds, **Attorney General's Opinion 57-25** (attached), providing it qualifies as a depository under the terms of 11-2-33 supra. Whether or not the banks can qualify is an administrative question to be decided by the Torrance Board of County Commissioners. In their determination of the question the board is to be guided by the sections {\*43} of the law cited in 11-2-33 supra.

2. Section 11-2-33 supra and Section 11-2-35, N.M.S.A., 1953 Compilation, govern the distribution of public monies between the qualified banks. See **Attorney General's Opinion 62-71** (attached). The standard to be used in determining the actual amount to be deposited to each qualifying bank is noted in 11-2-33 supra which provides:

". . . public moneys so deposited shall be equitably distributed between all of the banks within the county so qualifying, **upon the basis of the relative capital stock and surplus of such banks.** . ." (emphasis added)

Admittedly the standard underscored above is somewhat vague, but can be adequately explained when the importance of the "safe keeping" of public funds is considered. The Legislature obviously contemplated that the amount of capital and surplus of a qualified bank was a valid indication of its financial stability and through the enactment of the above provision intended that the county treasurer consider the qualifying bank with the greatest capital stock and surplus for the deposit of the larger sum to be distributed between the qualifying banks in the county.

This explanation is further substantiated by the actual formula to be used in the distribution of the funds as provided by 11-2-35 quoted in part as follows:

"When two (2) or more banks shall qualify under the provisions of this act as depositories of the public moneys of any county. . . the treasurer having the custody of such moneys shall deposit the same in the several banks so qualifying, **in the proportion that the amount for which such bank shall have qualified bears to the aggregate amount for which all of said banks shall have so qualified. . .**"  
(emphasis supplied)

The county treasurer should determine what amounts of money he will deposit in each qualifying bank by following the formula provided in 11-2-35 supra.

For example, assume the county treasurer has \$ 100,000 to deposit in two qualifying branch banks in Torrance County. Bank A has capital and surplus of \$ 75,000. Bank B has capital and surplus of \$ 25,000. The total capital and surplus of both banks is \$ 100,000.

The proportion of the deposit to which Bank B is entitled is found by determining the ratio that the capital and surplus of Bank A, bears to the **combined** capital and surplus of both qualifying branch banks (A and B). This is expressed by the fraction  $75,000/100,000$  which equals  $3/4$ 's. Bank A is entitled to  $3/4$ 's of the aggregate amount of deposit (\$ 100,000) which equals \$ 75,000.

Bank B has \$ 25,000 of capital and surplus. Therefore Bank B's proportional share is  $25,000/100,000$  or  $1/4$  of the total deposit (\$ 100,000) which equals \$ 25,000.

The formula explained in the example above is in accord with the standard to be used for the deposit of the funds as set out in 11-2-33 supra. It is to be observed that the qualifying branch bank with the greater capital and surplus will always receive the larger share of the deposit.

By: George Richard Schmitt

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