

Opinion No. 67-144

December 13, 1967

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: James W. Musgrove Assistant District Attorney Eleventh Judicial District
Farmington, New Mexico

QUESTION

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1. After the county tax levy for current school funds has been made and where there are excess funds for the immediate expenditures, who has the authority and the responsibility for depositing those funds where the local Board of Education has not been designated a Board of Finance?
2. Do these funds have to be deposited in a pro rata amount in the various banks as other county funds?

CONCLUSIONS

1. The county treasurer.
2. Yes.

OPINION

{*230} ANALYSIS

Sections 77-6-41, N.M.S.A., 1953 Compilation (P.S.) provides as follows:

Except revenue for a cafeteria or for an activity fund, all revenue for public school purposes distributed to a school district, or collected by a county, school district, or public school authorities for a school district shall be delivered to and kept by a county treasurer or a board of finance of a school district in funds approved by the division. Disbursements from these funds shall only be made for matured debts by voucher and warrants or checks of the local school board. In no event shall any money be expended or debts incurred except as authorized by the Public School Finance Act [77-6-1 to 77-6-46]. Revenue for a cafeteria or for an activity fund shall be deposited in a bank or banks approved by the local school board.

It is clear from this section that if a local school board has not been designated a Board of Finance, the county treasurer is to keep all school revenue. These revenues are to be kept in funds approved by the Public School Finance Division.

The deposit of the funds under the contract of the county treasurer is, in our opinion, controlled by section 11-2-33, N.M.S.A., 1953 Compilation. This section provides specifically for the deposit of public monies held by a county treasurer, in banks that have qualified under Sections 11-2-18, 11-2-27, 11-2-32 and 11-2-33, N.M.S.A., 1953 Compilation as depositories for public monies. The section also sets forth a formula under which the deposits shall be made. Therefore, we have concluded that the answer to your second question is yes.

By: Roy G. Hill

Assistant Attorney General