

Opinion No. 73-45

June 6, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable John B. Irick New Mexico State Senator 6500 Rogers, N.E.
Albuquerque, New Mexico 87110

QUESTIONS

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Does Section 11-2-32, N.M.S.A., 1953 Comp. set out the entire requirement for the deposit of securities relating to the state bank account held by the state fiscal agent if such account is filled in whole or in part in certificates of deposit?

CONCLUSION

Yes, see analysis.

OPINION

{*90} ANALYSIS

Section 11-2-32 (A), N.M.S.A., 1953 Comp. (1971 Supp.) confers upon the Board of Finance the authority to ". . . designate a bank doing business in this state and having an unimpaired capital and surplus of at least one hundred fifty thousand dollars (\$ 150,000) as the 'fiscal agent of New Mexico.'" Section 11-2-32 (D), **supra**, requires the "fiscal agent of New Mexico" to furnish a surety company bond or other securities specified by law in an amount not less than Two Million Five Hundred Thousand Dollars (\$ 2,500,000) or such larger amount as the State Board of Finance may require ". . . as security for the safekeeping of the money of the state and the faithful performance of its duties as the fiscal agent."

Section 11-2-32 (D), **supra**, makes it quite clear that this security requirement is the only such requirement applicable to the fiscal agency account. The statute states in relevant part:

". . . No other bond or security is required of the fiscal agent for the securing of funds deposited by the state treasurer in the fiscal agency account. . . . Nothing in this section shall prevent the bank, designated as {*91} fiscal agent, from also qualifying as a state depository under sections 11-2-18, 11-2-27, 11-2-32 and 11-2-33, N.M.S.A., 1953."

This provision of Section 11-2-32 (D), **supra**, not only sustains the proposition that the "fiscal agency account" is a unique account with respect to which a bond or other

specified securities amounting to Two Million Five Hundred Thousand Dollars (\$ 2,500,000) or a larger figure set by the State Board of Finance is to be provided by the designated state fiscal agent, but it also clearly suggests that there may be accounts or deposits of public funds (other than the fiscal agency account) with respect to which different statutory provisions apply. Indeed, Section 11-2-32 (F), **supra**, provides the procedure by which a banking institution may be designated as a "state depository" of public funds, while Section 11-2-32(A), **supra**, specifies that the Board of Finance shall establish a procedure for the designation of the state fiscal agent. Any bank designated as a depository of public money which is to receive accounts or deposits of public funds (other than the fiscal agency account) is required by Section 11-2-18.2, N.M.S.A., 1953 Comp. (1971 Supp.) to execute a surety bond or deliver other specified securities ". . . in an aggregate value equal to one-half [1/2] the amount of public money to be received . . ." for deposit in the designated depository.

Section 11-2-32(D), **supra**, is a specific provision governing the security requirements for deposits of public money in the fiscal agency account, regardless of the form in which they are held, and this provision governs in the event of any conflict or inconsistency with general statutory provisions specifying security requirements for deposits of public money in banking institutions designated as depositories of public money such as Section 11-2-18.2, **supra**. **State v. Tomson**, 79 N.M. 748, 449 P.2d 656 (1969); **State v. Chavez**, 77 N.M. 79, 419 P.2d 456 (1966); **Lopez v. Barreras**, 77 N.M. 52, 419 P.2d 251 (1966).

The terms and conditions under which the "fiscal agency account" is to be managed is a matter to be agreed upon by the State Board of Finance and the bank designated as the state fiscal agent. As stated in Section 11-2-32 (C), **supra**:

"The agreement shall contain the terms and conditions which are necessary, in the judgment of the state board of finance, for the proper conduct of the fiscal affairs of the state and the safekeeping of the money of the state."

Pursuant to this authority the State Board of Finance may determine in what form public funds in the fiscal agency account are to be held. Accordingly, whether a certain portion of the fiscal agency account should be held as time deposits and the amount of such deposits are matters which the State Board of Finance may determine. As previously noted, the statutory requirements for securing funds deposited in the fiscal agency account, regardless of the form in which such funds may be held, are contained in Section 11-2-32 (D), **supra**.