

Opinion No. 82-06

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FINANCIAL INSTITUTIONS; PUBLIC FINANCES

If the interest rate is controlled by superceding federal regulation because the amount of the deposit is less than \$100,000, a bank or savings and loan association cannot be said to have failed to pay the minimum rate for purposes of Section 6-10-36(D) NMSA 1978.

QUESTIONS

Does the requirement that a financial institution forfeit a deposit of public money for failure to pay the rate of interest set by the state board of finance apply in the event that rate is not paid because of federal law or regulation?

CONCLUSIONS

No.

ANALYSIS

The amount of interest to be paid on deposits of public money in banks or savings and loan associations is determined in accordance with Section 6-10-36(D) NMSA 1978 which provides, in part, that

"The rate of interest for all public money deposited in interest-bearing accounts in banks and savings and loan associations shall be set by the state board of finance but in no case shall the rate of interest be less than one hundred percent of the asked price on United States treasury bills of the same maturity on the day of deposit."

OPINION

To enforce this provision, Section 6-10-36(D) further states that

"Any bank or savings and loan association that fails to pay the minimum rate of interest at the time of deposit provided for herein for any respective deposit forfeits its right to an equitable share of that deposit under this section."

Nevertheless, interest rates on certain deposits may be set instead by superceding federal law or regulation. Thus, the legislature provided at Section 6-10-33 NMSA 1978 that

"No deposit of public funds shall bear interest where any bank or savings and loan association is precluded from paying interest on such deposit by federal law or the regulations of any agency or instrumentality of the United States and no deposit of public funds shall bear a greater interest rate than banks or savings and loan associations are authorized to pay under such federal laws or regulations."

To the extent that deposits implicitly authorized by Section 6-10-33 may be forfeited under Section 6-10-36(D), there exists an inherent conflict or ambiguity. Where legislative intent is not clearly expressed by the plain language of the statute, it may be determined by rules of construction. **Arnold v. State**, 94 N.M. 381, 610 P.2d 1210 (1980). Where an ambiguity is created by two statutes, a court would "consider all existing statutes relating to the same subject so that, if possible, all of the acts will be operative." **Runyan v. Jaramillo**, 90 N.M. 629, 631, 567 P.2d 478 (1977).

In Laws 1981, Chapter 332, the legislature amended various statutes {^{*279}} relating to the deposit and investment of public money. The intent of the legislature, as indicated by the title of Chapter 332, see, **Harriett v. Lusk**, 63 N.M. 383, 320 P.2d 738 (1958), was to provide equal treatment of banks and savings and loan associations. Accordingly, Section 6-10-36(C) NMSA 1978 was amended to provide that deposits of public money in interest bearing accounts be equitably distributed on the basis of net worth among all eligible banks **and** savings and loan institutions. Sections 6-10-33 and 6-10-36(D) were also amended to accommodate the requirement of equal distribution.

One result of the broader distribution of public money may be deposits in amounts shall enough to be subject to federal interest limitations. For example, on deposits of less than \$100,000 by governmental units, regulations issued by the Board of Governors of the Federal Reserve System provide that member banks may not pay interest in excess of 8%. Regulation Q, Section 217.7. Federal regulations applicable to non-member banks and to savings and loan associations similarly set a maximum 8% interest on deposits by governmental units of less than \$100,000. See, e.g., FDIC Rules and Regulations, Section 329.6; Rules and Regulations of Federal Home Loan Bank System, Section 526.3.

As the minimum interest rate set by the board of finance is now higher than 8%, banks and savings and loan associations receiving deposits subject to superceding federal regulations cannot pay the minimum rate set by Section 6-10-36(D). To require the forfeiture of these deposits would, however, be inconsistent with legislative intent to provide for the equitable distribution of public money. Statutes should be interpreted to accomplish the ends sought to be accomplished. **State ex rel. Newsome v. Alarid**, 90 N.M. 790, 568 P.2d 1236 (1977).

Legislative intent can be given effect if the minimum rate requirement imposed by Section 6-10-36(D) were applicable only to deposits in banks or savings and loan associations which can set the rate of interest. If the interest rate is controlled by superceding federal regulation because the amount of the deposit is less than \$100,000, a bank or savings and loan association cannot be said to have **failed** to pay the minimum rate for purposes of Section 6-10-36(D). Nothing in Laws 1981, Chapter 332 would suggest that legislative intent to equalize deposits did not anticipate deposits of less than \$100,000.

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