

Opinion No. 14-1322

September 14, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Eugenio Sana, East Las Vegas, New Mexico.

FUNDS OF INSANE ASYLUM.

Directors of New Mexico Insane Asylum have no control over actions of its treasurer as to where funds should be kept.

OPINION

{*180} Your letter of the 8th instant was received here while I was absent in Denver, and I take the first moment I have had since my return to answer.

You say, in substance, that you are the secretary-treasurer of the board of directors of the New Mexico Insane Asylum, and that {*181} the board, by resolution, has ordered you to deposit the checking account of the institution with a particular bank in East Las Vegas in order to have the benefit of the two per cent interest paid by that bank on daily checking accounts. You say that you have deposited a part of your money in four per cent certificates of deposit in other banks, and the balance, enough for present needs, you have deposited as a checking account with the bank designated by the board. It appears, further, that the board declined to approve your report showing these facts, on the ground that you had invested the money without the consent of the board, and you ask whether the board has any right or authority to compel you, as treasurer, to deposit the funds with any particular bank, and you ask some other questions which are not material to be stated, as what I have to say will cover all of them.

As far as I can discover your board has no lawful control over your actions as to where or how you shall keep the money intrusted to you by virtue of your office. The board, as such, has nothing to do with the care and custody of the money for the safe keeping of which you have given a bond. The board has charge of the disbursements and expenditures of moneys received for its use. You alone are responsible for the money and no action of the board could relieve you from such responsibility. If you should obey any order of the board to deposit the money in any particular bank and the money should be lost by the failure of that bank, I am of opinion that you would still be responsible under your bond for the money so lost. The only limitation upon your authority as treasurer of which I am informed is to be found in Section 10 of Article VIII of the Constitution, which provides that any public officer making any profit out of public moneys or using the same for any purpose not authorized by law shall be deemed guilty of a felony and shall be punished as provided by law, and be disqualified to hold public office. It is further provided, in the same section, that all public moneys not invested in interest bearing securities shall be deposited in banks and the interest derived

therefrom shall apply in the manner prescribed by law. Our Supreme Court has recently held as to this clause that all interest which may be derived from deposits of money is the property of the state.