

Opinion No. 17-1911

January 5, 1917

BY: H. L. PATTON, Attorney General

TO: Hon. W. G. Sargent, Secretary, State Board of Finance, Santa Fe, New Mexico.

Public Moneys Act of 1915 Construed.

OPINION

Replying to the request contained in your letter of yesterday's date for an opinion upon various phases of Chapter 57 of the Laws of 1915, entitled, "An Act in Relation to Public Moneys," will say that the following is an expression of my views of this act in answer to your inquiry:

First. It is first provided in Sec. 2, that an official is not required to pay moneys to the State Treasurer until such moneys have become the absolute property of the state. It is further provided in said Sec. 2, that such official shall deposit such moneys, "as in this act provided, in some bank or banks of this state, qualified, etc." Sec. 4 not only creates the State Board of Finance, but attempts to define the duties of the Board -- although only general terms are employed in defining the duties, leaving the meaning of the act a trifle obscure. To this Board is entrusted the supervision of the safe-keeping not only of all public moneys coming into the state treasury, but "all public moneys coming into the possession of any state official, department or bureau." In my opinion the power of supervision of the safe-keeping by the State Board of Finance, extends to the moneys described in the two provisos in Sec. 2, although such moneys, when deposited in the qualified banks, are deposited in the name of the official to whom they are paid. However, I fail to see where the State Treasurer has any authority over or duties as to the moneys described in the provisos referred to. While, as I have said, there is some obscurity in expression in the two sections, in my opinion there is no conflict which cannot be reconciled.

Second. I have heretofore discussed the power and duty of supervision of safekeeping entrusted to the State Board of Finance by Sec. 4 of the act. By Sec. 13 of the act, the duty is imposed upon the State Treasurer of depositing the moneys in his custody equitably among the qualified depositories. These moneys being in his custody and deposited to his credit, the direction as to the equitable distribution of the funds does not detract from the authority of supervision of safe-keeping conferred by Sec. 4 of the act. This section is directory to the State Treasurer with reference to equitable distribution of the deposits just as the proviso in Sec. 2 was directory to the official with reference to depositing funds in designated banks. In both instances the State Board of Finance retains the right of supervision of safekeeping. As further evidence of this position, to my mind, I cite you to Sec. 19 of the act which relieves any treasurer from liability when he

has deposited moneys in qualified banks -- except in cases of failure to exercise reasonable care.

Third. A part of Sec. 11 of the act reads as follows:

"Such board of finance shall, at its next meeting after the receipt of such proposal open and consider the same, and if the same is found to be in accordance with the provisions of this act, **shall** thereupon notify such bank that upon its furnishing a bond or bonds or other security as provided by this act, it will be designated as a depository of such monies in an amount to be fixed by said board in accordance with the provisions hereof, etc."

From such language I am of the opinion that it is the duty of the board to designate all banks qualifying under the provisions of the act. However, we might infer that the amount fixed is a matter within the discretion of the board except as to funds held by the State Treasurer, which, according to Sec. 13, must be "equitably" distributed.

Fourth. In my opinion Sec. 11 makes it imperative that three per cent per annum be collected upon all moneys herein mentioned in the act. While such is not the direct declaration of the act, the section last mentioned requires the banks making application to agree to pay such interest. Thereafter deposits so made would be made pursuant to the agreement to pay three per cent on daily balances. The latter part of this question is answered in the third paragraph of this letter in which I state that the amount of deposit is discretionary, except as to the funds deposited by the State Treasurer.