

Opinion No. 17-2042

July 31, 1917

BY: HARRY L. PATTON, Attorney General

TO: Hon. J. F. Findlay, Chairman Board of County Commissioners, Las Cruces, New Mexico.

County Funds In Depositories Must Never Exceed Ninety Per Cent of the Bond of Such Depository.

OPINION

I am in receipt of your recent letter in which you ask for an opinion as to the amount of bond which should be given by a depository of county funds under the provisions of Chapter 57, Laws of 1915, the same being the Public Moneys Act. You state in your letter that at times one of your local banks, which is a county depository, has on deposit as much as \$ 75,000.00, or even more. On the other hand, there are times when the bank carries overdrafts on county funds. You further say that the average deposit will not exceed \$ 35,000.00. You ask whether or not your County Board of Finance, under said circumstances, would be authorized to approve a bond in the sum of \$ 40,000.00.

The second paragraph of Section 9 of the Act referred to requires that the bond

"shall be subject to the approval of the proper board of finance of the State, county, city or town, or board in control."

In the same section, near the bottom of page 71, we find a provision which reads as follows:

"And neither the state treasurer, nor any county, city or town treasurer, nor the treasurer of any board in control mentioned in section 7, shall have on deposit at any time more than ninety (90) per cent of the penal amount of the bond or bonds given by a depository to secure such deposit."

In my opinion the language of the act is clear and plain to the effect that the amount deposited at any one time shall not exceed ninety per cent. of the amount of the bonds. It follows that, if at times your county has as much as \$ 75,000.000 on deposit in this bank that this must not exceed ninety per cent of the bond. Another way of stating it is that the bond must equal one hundred nine per cent of the amount deposited.

I further note that it is your understanding that in other counties of the State, county depositories have been permitted to file bonds slightly in excess of the amount of their average deposit of county funds. I will state that no such course is based upon an

opinion from this office, and I further state, that in my opinion such course violates the provisions of the statute referred to.