

## Opinion No. 17-2007

June 20, 1917

**BY:** HARRY L. PATTON, Attorney General

**TO:** Hon. George L. Ulrick, Carrizozo, New Mexico.

Basis for Distribution of County Funds to Banks

### OPINION

I am in receipt of your two letters in which you ask for a construction of Chapter 57, Laws of 1915, with reference to the question of whether or not the distribution of the County funds should be made in proportion to the authorized capital of the bank, or the paid-up capital of the bank.

Section 12 of the Act referred to, as amended by Chapter 70, Laws 1917, which requires the treasurer of the county, city or town, or board of control, to deposit public funds in qualified depositories, contains the following provision, which was added by the Act of 1917:

"PROVIDED, that public monies so deposited shall be equitably distributed between all of such banks and trust companies within the county so qualifying, upon the basis of the relative capital stock and surplus of such bank."

Section 11 of said Act of 1915, as amended by Chapter 70, Laws 1917, which relates to the proposal of the bank to receive deposits, and the notification of the bank by the board of finance, and the requiring of security by the bank, contains the following provision, which was added by the act of 1917,

"which amount, however, shall not exceed 75 per cent. of the capital and surplus of such bank so applying to be designated as a depository of public monies."

By adding the word "surplus" in these two instances, the Legislature, in my opinion, clearly indicated that it intended that banks should be measured by their true worth. A bank with a surplus is entitled to receive a greater amount of deposit of public funds than a bank with the same capital stock but with no surplus. It might be reasoned that a bank whose capital stock was not fully paid should likewise be measured by its true worth, or the amount of capital stock actually paid in. Had the Legislature defined the standard as the amount of capital stock, without adding the word "surplus," the rule would have been different. Inasmuch as the word "surplus" has been added, and the indication thereby expressed that the true worth of the bank would be the standard, I am of the opinion that the distribution should be upon the basis of capital stock and surplus in each instance where the bank has a surplus, and upon the capital stock actually paid in, in any instance where the full amount has not been paid in.