

Opinion No. 20-2577

May 11, 1920

BY: H. S. BOWMAN, Assistant Attorney General

TO: Mr. Oscar B. Wood, Treasurer, Dona Ana County, Las Cruces, New Mexico.

Deposit of Excess County Funds in Depositories Outside of County.

OPINION

We are in receipt of your letter requesting advice concerning disposition to be made of public funds in your possession in excess of the amount for which the depositories in your county have qualified as required by law to receive funds.

Section 12, Chapter 57, Laws of 1915, as amended by Section 2, Chapter 70, Laws of 1917, provides:

"That Section 12 of Chapter 57 of the Session Laws of 1915, relative to public monies be and the same is hereby amended to read as follows:

Sec. 12. The Treasurer of every county, city or town, or board of control, shall deposit the public monies in one or more banks or trust companies within his county which have qualified as depositories thereof under the provisions of this act; 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 banks; but when no bank in his county shall have so qualified, or when he shall have qualified, such monies, or such excess, as the same may have in his custody public monies in excess of the aggregate amount for which banks in his county shall have qualified, such monies, or such excess, as the same may be, shall be deposited in a duly qualified depository or depositories in some other county in this state."

From the foregoing you will note that when an official has in his custody public moneys in excess of the aggregate amount for which the banks in his county shall have qualified, the excess may be deposited in a qualified depository in some other county in the state.

We believe that this provision is mandatory and that such procedure should be followed in the case mentioned in your letter.

We would suggest that you communicate with some bank in some other county, and if such bank has qualified as a depository in the same manner that banks in your county have qualified, that you deposit with such bank the excess which the banks of your own county are unable to receive by reason of the limitations expressed in the act.