

Opinion No. 22-3272

January 28, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Hon. M. C. Mechem, Governor, Santa Fe, New Mexico.

Distribution Public Funds Among Public Depositories.

OPINION

{*120} In reply to your letter of the 25th instant, enclosing copy of a proposed plan suggested by Governor Hagerman for the distribution {*121} of state funds among qualified depositories in New Mexico, and covered by a suggested letter to be written by you and sent to all such depositories, I wish to advise:

The proposed plan contemplates not only the designation of depositories as entitled to state funds after complying with the provisions of Chapter 57, Laws of 1915, providing qualifications for depositories of such funds, but also the amount of such funds to be deposited in each of such institutions so qualifying.

The provisions of the act mentioned do not clothe the State Board of Finance with any such power. Section 4 of the act, after constituting the Governor, the State Auditor and the State Treasurer as the State Board of Finance, provides that they shall have supervision of the safe-keeping of all moneys coming into the state treasury and all public moneys coming into the possession of any state official, department, commission or bureau, and shall have supervision of all the fiscal affairs of the state sinking funds.

Section 11 of the act prescribes the method by which public depositories are designated and imposes upon the respective boards of finance the duty of so designating these depositories.

Section 13 of the act provides that the State Treasurer shall deposit all moneys in his custody equitably among the depositories applying therefor and qualifying under the terms of this act.

It will be noted from an examination of the sections mentioned that the designating of depositories of public funds rests with the various boards of finance, and that the State Board of Finance has a general supervision of the safe-keeping of the state funds and the fiscal affairs of the state. The specific duty of depositing the funds in the public depositories is placed upon the State Treasurer, and as this is a special duty provided for in the act, which is in limitation of the general powers of supervision imposed upon the State Board of Finance by Section 4, under the well known rules of statutory construction, the special power, being in derogation of a part of the general powers, would prevail.

Therefore, in my opinion, the State Board of Finance would have no authority to distribute the funds in the various depository banks nor would it have any power to specify the amount of funds which each such institution should receive. That power is vested by Section 13 solely in the State Treasurer.

The suggestion also that the First National Bank of Santa Fe be permitted to charge one-tenth of one per cent for outside collections, the bank being designated by the Board of Finance as a medium for the conduct of business of the state treasury, is not authorized by law and such action, in my opinion, could not be legally sustained.

Neither the State Board of Finance nor any other state agency or official has any authority to permit the funds of the State to be used in payment for services rendered in making collections from other state depositories.

Therefore, it would appear as if the proposal suggested in the copy of the letter which accompanied your request for an opinion could not be sustained.

We beg to return herewith the copy of the plan which accompanied your letter.