

Opinion No. 22-3396

April 27, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Chesley H. Thomason, County Clerk, Alamogordo, New Mexico.

Funds in Hands District Clerk Subject to Public Moneys Act.

OPINION

{*146} In reply to your letter of the 22nd instant asking if moneys in the hands of the Clerk of the District Court, including deposits for costs, money deposited with the Clerk instead of bonds, etc., are subject to the provisions of the Public Moneys Act regarding deposits of public funds, I wish to advise:

Section 2, Chapter 57, Laws 1915, provides that it shall be the duty of each and every official having the custody of any moneys re-received from any source other than the state, to pay into the state treasury on or before the second Monday of each month, all such moneys so received or collected during the preceding month, provided that any moneys received by any such official shall not be paid over to the State Treasurer until such moneys have become the absolute property of the state, and provided further, that any state official having in his custody any moneys described in the preceding proviso, shall deposit the same as in this act provided, in some bank or banks of this state qualified in every particular under the terms of this act, to receive deposits of public moneys.

Under the mandate of this section, it is quite clear that the class of moneys mentioned in your letter must be deposited in a {*147} qualified depository, and that such depository must pay interest therein in accordance with the provisions of the above mentioned Chapter.

The Chapter provides for a certain class of security to be given by depository banks. The classes named do not include personal bonds and, therefore, you would not be authorized to accept as security for such a personal bond.

In addition to the surety bonds provided for in the act, banks may secure the deposits by the delivery of bonds of the United States, of the State of New Mexico, of any county of the state or any legal subdivision thereof, including drainage and irrigation bonds of an aggregate value equal to the amount of the depository bond in lieu of which they are so delivered, such bonds to be accepted at 90 per cent of their par value. These bonds must not be worth less than par at the time of the deposit.