

Opinion No. 22-3480

June 10, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. W. B. Humphries, Jr. City Treasurer, care First Nat'l Bank, Tucumcari, N. Mex.

Depository Bonds and Interest Upon Deposit Public Funds.

OPINION

{*161} In reply to your letter of the 7th inst., asking if depository bonds given by banks to cover city deposits, which deposits are made in accordance with the public moneys act (Ch. 57, L. 1915), can be made to cover the same deposits placed on certificate of deposit at an increased rate of interest, I wish to advise:

The wording of the bonds would of course control in a case of the nature mentioned, but ordinarily the bond could not be held liable for default in the payment of the money if it is not deposited in the manner provided for in such bond. I would suggest that if the monies are withdrawn from the checking account which draws three per cent, and are deposited under certificate of deposit drawing a higher rate of interest, that a new bond be furnished by the surety company.

{*162} You also ask if the Board has the power to exact of the bank a higher rate than that named in the law.

Of course the Board has no such power. If the bank should agree to pay a higher rate of interest, such agreement could be enforced, but it cannot be compelled to do so in the absence of a contract on its part.