

Opinion No. 23-3690

April 9, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. John Joerns, Acting Educational Auditor, Santa Fe, New Mexico.

Municipal Boards of Finance May Designate Depository for Municipal School Fund.

OPINION

{*40} We quote from your inquiry as follows:

"* * * I am of the opinion that municipal boards of education can, as boards of finance, direct the County Treasurer to make deposits in accordance with their orders and in such banks as designated by them, provided the depositories furnish the usual security. In case they have this authority, it would necessarily become incumbent on the county treasurers to have separate deposits of municipal school funds."

The seeming conflict between Senate Bill No. 112, the School Code, and Senate Bill No. 67, the Public Monies Act, is probably more apparent than real. We think the two bills may be made to harmonize. The intention of the two acts, when construed together, is that the funds, in question, shall first be deposited with the County Treasurer, but by him re-deposited with such depositories as the municipal boards of finance may designate. Section 7 of Senate Bill No. 67 provides:

"Immediately after the organization of said several boards of finance and the certification by them of certain banks in this state as qualified under the provisions of this act, to receive public monies on deposit * * * the several county, city and town treasurers who shall then have on hand any public monies by virtue of their several offices, shall make deposit of such monies in the bank or banks certified by said respective boards of finance * * *."

We think the City Board of Finance should certify to the County Treasurer the name of the banks to receive such deposits and that the County Treasurer will be required to make the deposits accordingly. Under Section 6 the Board of Finance determined how the monies shall be deposited and its conclusion in those particulars should also be certified to the County Treasurer -- the proportionate part to which each bank shall be entitled, etc.

Section 617 of said Senate Bill No. 112, provides:

"The district tax proceeds for direct charges shall be credited to each district from which collected, in a separate fund, and be disbursed upon the warrant or voucher of the governing authority of such district."

Section 14 of the Public Monies Act, Senate Bill No. 67 provides:

"* * * Upon the first day of each month, all interest accrued upon the deposit with it of any public monies under the provisions of this act shall by the bank be credited to the state, county, city or town, or board in control of whose monies it so holds."

{*41} We think it is undoubtedly the intention of the law that the proceeds of all such deposits shall be credited to the municipal district and in a separate fund.

It seems that the only particular precaution necessary for County Treasurers in making such deposits is to have in hand the certificate of the proper board of finance and know that the required bond, properly approved, has been made and filed.