

Opinion No. 24-3770

July 7, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. R. H. Carter, State Comptroller, Santa Fe, New Mexico.

Institutions can not Carry Non-Interest Bearing Checking Accounts Except Thru Arrangement with State Finance Board.

OPINION

{*149} Your inquiry, in substance, is whether or not state educational institutions may carry a "checking account" and thereby, at the discretion of the Board of Regents, relieve the depository from paying interest or giving security for such checking account.

The Board in control of any such institution is a Board of Finance but is authorized to deposit its moneys in conformity with Public Moneys Act of 1923. See Sec. 6, Chap. 76, S. L. 1923 which provides:

The boards in control of the various public and educational institutions in this State * * * are hereby designated as boards of finance for such institutions and boards respectively. Each of such boards shall * * * deposit the funds of such institutions or boards in a depository or depositories qualified in accordance with the requirements of this Act, equitably and upon the terms and conditions and in like manner and subject to such limitations as in this Act prescribed for the deposit of public monies by other boards of finance.

The institutional board, under said Act, is authorized to deposit its moneys in any bank only after such bank has given bond to cover both principal and **interest** as will be observed from the provisions of Sec. 8, Chap. 76, S. L. 1923 which provides:

No public monies * * * in the custody of any board in control mentioned in Sec. 6 shall be deposited in any bank until such bank is qualified to receive deposits of public monies by giving a bond or other securities as required by this Act.

Any bank designated as such depository by the proper board of finance shall give a bond or bonds in such sum as may be determined by said board of finance, for the safe keeping and payment of such monies, and all **interest** thereon, * * *."

The form of the bond set out at said Section 8 provides for 3 percent interest. Banks authorized to receive such public moneys are required to make proposal therefor with an agreement to pay 3 percent interest on daily balances as shown at Sec. 10, Chap. 76, S. L. 1923 which reads:

Any bank authorized to receive public monies may file with the board of finance having control of any such monies, a deposit of which is desired by said bank, its written proposal to receive such monies on deposit, together with its agreement to pay interest on daily balances of such monies so deposited at a rate of three (3) per cent per annum; * * *.

In lieu of the depository bond hereinbefore referred to, said board may receive and hold the **bonds** described at Sec. 9, Chap. 76, S. L. 1923 as security for such deposits. However, the proposal {*150} as shown at said Section 10 will show the agreement to pay the 3 per cent interest.

All money in the custody of such board, however, is **State** money and a convenient "checking account" thereon may be procured, wherever necessary, through the State Board of Finance under the provisions of the last paragraph of Sec. 10, Chap. 76, S. L. 1923 which reads:

The State Board of Finance may designate one or more banks doing business in this State as State clearing depositories in which monies necessary to meet the current obligations of the State may be deposited as temporary checking accounts. No bank shall be so designated unless it has an unimpaired capital and surplus of at least \$ 150,000.00; and not more than 15 per cent of the total monies of the State on hand shall be on deposit in all such checking accounts at any one time. Such checking accounts shall not be subject to the requirements of this Act relative to the amount of deposits, the payment of interest thereon and the giving of security but said Board shall make such requirements as to the handling of said checking accounts, the giving of security therefor and the payment of interest thereon as in its discretion may be deemed advisable; and provided that nothing herein contained shall prevent any bank so designated as a State clearing depository from also qualifying as a State depository under the provisions of this Act.

This latter quotation provides the only means by which boards of state institutions may open a "checking account" with any bank without complying strictly with the other provisions of said Chapter 76 as to bond and interest. Section 11 of said Chapter does not concern or affect state institutions.

As to the State Board of Finance, we quote you the following provisions of Sec. 3, Chap. 76, S. L. 1923:

The Governor, the Attorney General and the Auditor shall, without additional compensation, constitute a State Board of Finance, * * *.

The State Board of Finance shall have general supervision of the fiscal affairs of this State and of the safekeeping and depositing of all monies belonging to or in the custody of the State and shall have power to make rules and regulations to carry out the purposes of this Act.