

Opinion No. 26-3912

September 7, 1926

BY: ROBERT C. DOW, Assistant Attorney General

TO: Hon. A. T. Hannett, Chairman, State Board of Finance, Santa Fe, New Mexico.

At the last meeting of the State Board of Finance you requested an opinion as to what degree of care should be used in the protection of unregistered bonds and other securities held by the State of New Mexico as security for public monies. Some question also arose as to whether or not the State could make arrangement with the Federal Reserve Bank authorizing such bank to have custody of such securities.

Under § 2, Chapter 123, Laws of 1925, such securities must be deposited with, and held by, the State Treasurer after their approval by the State Board of Finance. Inasmuch as this law designates the State Treasurer as the custodian of securities placed with him as security for deposits of public monies, I believe that he is the only official who could be entrusted with the safekeeping of such securities.

With reference to the degree of care to be used in the protection and safekeeping of such securities, the general rule of law is that ordinary or due care must be used. The rule of law is set out in 21 Ruling Case Law, page 664, and 22 American and English Encyc. Law, 2nd Edition, page 862. In Ruling Case Law it is said:

"In case the pledge is stolen from the pledgee, the mere fact of the theft establishes neither responsibility nor irresponsibility on his part. It is like any other loss. If the theft is occasioned by any negligence, the pledgee is responsible therefor if he is guilty thereof; if without negligence on his part, he is discharged from liability."

The same rule would be applicable in case the securities held by the State were lost or destroyed for any other reason other than by theft. Just what would constitute ordinary or due care must be decided upon the facts in each particular case, and as stated in Ruling Case Law "Any particular case must necessarily depend upon the character of the thing pledged and the circumstances attending it as well as the means of protection possessed by the pledgee."

§ 2, Chapter 123, of the Laws of 1925, provides that securities held as security for deposits of public monies may be protected by insurance against burglary and holdup, and the State Treasurer is authorized to take out such insurance.