

Opinion No. 31-344

January 7, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. Thomas F. Keleher, Jr., P. O. Box 423, Albuquerque, New Mexico.

{*125} Your letter of January 7, 1932, states that one of your public depositories in Albuquerque has offered the county finance board, of which you are chairman, State Highway Debentures as security for public moneys deposited in such depository, and, you ask for our opinion as "to the advisability and legality of the county finance board accepting these debentures as security."

It is our opinion that it is legal for the county finance board to accept such debentures for the purpose offered, if same are issued in conformity with and under the authority of Chap. 1 of the 1929 Sp. Session Laws, for Sec. 64-1106, in part is as follows:

"Said debentures (referring to Highway Debentures authorized by Chap. 1 L. 1929 Special) shall be accepted at their par value by all public officials in this state as security for repayment of all deposits of public moneys in this state, or of any county, municipal or public institution thereof * **"

As to the advisability of the board's acceptance of such debentures, we can but say that to date, the method of collection for the payment of such debentures, and their payment would lead one to believe that they are gilt edged securities. Also, it is probable that when such securities are offered to qualify as a depository of public moneys, such securities must be accepted by the board or office to whom same are offered. The language of the statute, quoted, is, as you note, "**said debentures shall be accepted.** . . .", the presumption being generally that the word "shall" in a statute is used in an imperative sense.

It is also true that where the word "shall" occurs in provisions regulating the mode of proceedings by public officials, the rule generally is that it is deemed directory to secure system, uniformity and dispatch. It is also interpreted in the sense of "may" depending upon the intention of the Legislature.

In the present case, the Legislature evidently intended to compel the acceptance of such debentures as security for the deposit of public funds for reason that, under an {*126} earlier act, Sec. 2, Chap. 123 Laws 1925, relating to public moneys, it provided that banks desiring to become public depositories, having been so designated by the various finance boards, may deliver as security any of the following: (a) Bonds or Treasury Certificates of the United States; (b) Bonds of the State of New Mexico; (c) Bonds of any County of this State; (d) Bonds of any legal subdivision of the State, including drainage and irrigation bonds on which all interest due has been paid for 5 years immediately preceding their acceptance as such security; (e) Federal Farm Loan

Bonds. Such bonds under such act are acceptable subject to the approval of the various boards of finance, and the section referred to commences with the words "Deposits of public money **may** be secured by bonds, etc. . . ."

The later act (Chap. 1, 1929 Special Session Laws) adds to those bonds enumerated by the 1923 act quoted, Highway Debentures and uses the words "shall be accepted . . . by all public officials, etc.", clearly, in our opinion, intending to compel the acceptance of such debentures as security for the deposit of public moneys at their par value.