

**Opinion No. 33-596**

May 5, 1933

**BY:** E. K. NEUMANN, Attorney General

**TO:** Honorable Juan N. Vigil, State Comptroller, Santa Fe, New Mexico.

{\*50} In your letter of May 4, 1933 you refer to a letter from C. C. Titus, President of the Espanola State Bank. This bank has deposited with the County Treasurer certain securities to secure deposits of public moneys. Our opinion is asked as to whether or not the treasurer's official bond would protect the bank against embezzlement of such securities by the treasurer.

One of the conditions of the treasurer's official bond is that he shall faithfully perform the duties of his office (Sec. 112-117 of the 1929 Code). It is his duty, in certain cases, to keep such securities in his possession for the benefit of the public. In the case of U.S. F. & G. Co. vs. Rainey, et al., 120 Tenn, 357, 113 S.W. 397 it is held that "a condition in a public officer's bond that he will faithfully perform all the duties of his office is a guarantee of the personal honesty of the officer furnishing indemnity against his defalcation."

I am, therefore, of the opinion that, should the County Treasurer embezzle securities legally deposited with him for the protection of public moneys, he would be liable on his official bond.

By: QUINCY D. ADAMS,

Asst. Attorney General