

Opinion No. 35-1015

May 4, 1935

BY: FRANK H. PATTON, Attorney General

TO: County Clerk, McKinley County, Gallup, New Mexico.

{*66} We are in receipt of your letter of May 2nd in which you request our advice as to whether or not it will be proper for the County Treasurer of McKinley County to send securities held by him as security for deposits of county funds to a Kansas City bank for safe keeping.

The law in this regard is Section 2 of Chapter 24 of the Laws of 1934, which provides in part as follows:

"Securities so delivered as security for the monies of any County, City, Town, or board in control, shall after the approval thereof by the proper Finance Board, be delivered to and held by the Treasurer having custody of the funds thereby secured. The State Treasurer or such other Treasurer is hereby authorized to take out insurance to protect such securities against burglary and holdup, and the cost of such insurance shall be paid by the respective Counties, Cities, Towns or Boards in control by which the same are so delivered to such Treasurer."

The law is silent as to where the securities are to be held, but simply say that they are to be held by the Treasurer. Obviously, it is only reasonable to suppose that the Treasurer may keep these bonds in some vault or in a proper place for safe keeping. We believe that there could be no objection to keeping them in any proper bank within this state, and technically there is perhaps no objection to sending them outside of the state for safe keeping.

There is just a possibility that if they are sent to some distant place, it might be difficult in some cases to obtain the securities quickly to be redelivered to the bank in case the bank should call for them, and in such case of unreasonable delay, the Treasurer might be liable for a loss occasioned by the delay.

In your particular case since the Merchants Bank of Gallup seems to have indicated that they would have no objection to having the securities kept in the Commerce Trust Company of Kansas City, we would suggest that you get a written statement from this bank, authorizing the Treasurer of McKinley County, to keep the said bonds in the vault of the Commerce Trust Company, and waive any objection which they might later raise, as to {*67} ness. The statute prohibits such a their being sent this considerable distance for safe keeping.

By J. R. MODRALL,

Asst. Atty. General