

**Opinion No. 35-1004**

April 27, 1935

**BY:** FRANK H. PATTON, Attorney General

**TO:** State Banking Department, Santa Fe, New Mexico. Attention: E. M. Hampton, Deputy State Bank Examiner.

{\*64} We have your letter of April 25th asking our advice as to whether or not the New Mexico state law requires the payment of interest on time deposits of public monies, particularly funds of villages, towns and cities.

Section 1 of Chapter 24 of the Laws of 1934 provides as follows:

"Interest on daily balances of public monies deposited in any bank authorized to receive public monies shall be paid at a rate of not more than two per cent nor less than one-fourth of one per cent per annum except as otherwise provided in this act."

The law then goes on and requires the State Board of Finance at its meeting in June of each year to fix the rate of interest within the limits prescribed as above set forth on all deposits of public monies during the succeeding fiscal year and refers specifically to all monies belonging to the State of New Mexico or to any county thereof or to any city, town, village, municipal school district, union high school district, independent rural school district, rural school district or to any other special or other district, board or institution.

Section 112-201 of the 1929 Code provides that no time deposits of any public money under any Board of Finance shall be for a period longer than six months and all such deposits shall be secured as provided by law and interest shall be paid on such deposits at the rate of three per cent per annum. The interest rate there fixed applies to time deposits only and a mandatory rate of interest is there fixed at three per cent.

In view of the above mentioned statutes, we do not see how it can be successfully contended that it is optional on the part of any Board of Finance as to whether or not interest shall be paid upon such deposits of public monies. The law, in our opinion, is mandatory that interest be paid.

By J. R. MODRALL,

Asst. Atty. General