

Opinion No. 39-3047

March 7, 1939

BY: FILO M. SEDILLO, Attorney General

TO: Mr. Hugh M. Milton II, President, New Mexico State College, State College, New Mexico.

{*21} This office is in receipt of your letter of March 1st and the enclosures of copies of various letters and telegrams pertaining to coverage of the account of the New Mexico College of Agriculture and Mechanical Arts in the First National Bank of Las Cruces, and requesting information and suggestions as to how you may handle the account of the College and participate in the protection of the Federal Deposit Insurance Corporation.

Similar questions were raised in the case of Casady vs. First State Bank of Cheyenne, Okla., et al, 24 F. Supp. 687, as to bank deposits and the Federal Deposit Insurance Corporation. It is interesting to note in this case, the Court held:

"A municipality's sinking fund, meter fund, firemen's pension fund, paving fund, and general fund, all of which were deposited in same bank by municipality's treasurer and controlled by {*22} him, constituted separate and distinct deposits, on each of which the Federal Deposit Corporation, upon bank's failure, was liable up to \$ 5,000, * * *."

In this case the funds did not belong to the municipality but were in custody of the treasurer for a distinct purpose and a specified beneficiary. May I call your attention to Section 12B, subsection (1) of the Federal Reserve Act of June 16, 1933, 48 Stat. 168, as amended by the Act of June 16, 1934, which provides among other things:

"For the purposes of this subsection, the term 'insured deposit liability' shall mean with respect to the owner of any claim arising out of a deposit liability of such closed bank the following percentages of the net amount due to such owner by such closed bank on account of deposit liabilities. * * *"

Said subsection further provides:

"That, in determining the amount due to such owner for the purpose of fixing such percentage, there shall be added together all net amounts due to such owner in the same capacity or the same right, on account of deposits, regardless of whether such deposits be maintained in his name or in the names of others for his benefit."

In examining these sections, let us assume that you had a deposit called "New Mexico State College Fund," is it not the "State of New Mexico?" At least it is in the name of others for his benefit. That is, the beneficiary owner is the same party. I think it impossible to separate the State of New Mexico and the State College.

For this reason the letter of January 9, 1939, from the State Board of Finance by E. D. Trujillo, Secretary, to Mr. M. P. Hernandez, Treasurer of the Board of Regents of New Mexico State College, is correct in principal, and that as stated in the letter the State Treasurer would be the beneficiary as only one deposit for state funds can be secured by Federal Deposit Insurance in the same capacity.

Senate Bill No. 35 on February 24, 1939, became Chapter 21, Laws of 1939, and reads as follows:

"Section 1. That the treasurer of the State of New Mexico and the several county, city or town treasurers and the treasurers of any public and educational institution in this state, and the treasurers of all irrigation districts and conservancy districts, and of all other boards of control handling public funds in any manner whatever, by authorization of their respective boards of control, may deposit such public funds in any bank of the State of New Mexico insured under the provision of the act of Congress creating the Federal Deposit Insurance Corporation up to the amount of such insurance, without requiring such bank to qualify as a public depository by giving security as required by the Laws of the State of New Mexico relating to Public Monies.

Section 2. EMERGENCY CLAUSE."

Under this law you may have a deposit up to the amount of such insurance without the bank giving security. But we are again met with the Federal Reserve Act of June 16, 1933, and amendments, as already quoted, and find the State Treasurer using the First National Bank of Las Cruces as a state depository and precluding any insurance benefit by the New Mexico State College deposit. This, I think, is confirmed in the telegram of L. E. Birdsell to President Hugh M. Milton of March 1, 1939:

"FIVE THOUSAND DOLLARS IS MAXIMUM INSURANCE FOR TOTAL OF ALL ACCOUNTS IN SAME BANK OF WHICH BENEFICIARY OWNER IS SAME PARTY * * *"

In conclusion, it is my opinion that under Chapter 21, Laws of 1939, you can deposit funds of the New Mexico State College in a bank without requiring said bank to give security up to the amount of insurance, and that there can be but one beneficiary for all the accounts as per the Federal Reserve Act of June 16, 1933, and that as suggested by the State Board of Finance, you could not deposit with the First National Bank of Las Cruces but, as suggested, the Mesilla Valley Bank of Las Cruces has no deposit from the State Treasurer and would qualify both under the new state law and the Federal Deposit {*23} Insurance Corporation and is the answer to your problem.

By: GEORGE LOUGEE,

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