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Opinion No. 6

**PUBLIC FUNDS, ratable distribution among banks; BANKS AND BANKING, ratable distribution of public funds; CITIES AND TOWNS, disposition of public funds; COUNTY TREASURER, disposition of public funds; SCHOOL DISTRICTS, funds, no requirements for ratable distribution — section 16-2618, R.C.M. 1947.**

September 8, 1969

Mr. John A. Dowdall  
State Examiner  
Sam Mitchell Building  
Helena, Montana 59601

Dear Mr. Dowdall:

I am enclosing herein the copy of an Official Opinion of the Attorney General. The substance of this opinion was sent to you in our letter of August 27, 1969.

Very truly yours,

WILLIAM A. McCORMICK  
Administrative Assistant  
Attorney General

August 27, 1969

Mr. John A. Dowdall  
State Examiner  
Sam Mitchell Building  
Helena, Montana 59601

Dear Mr. Dowdall:

You have requested an interpretation of section 16-2618, Revised Codes of Montana, 1947. The purpose of this section is to provide an equitable distribution of public funds among the various banks in a county, city, or town. With this purpose in mind, your questions can be stated and answered as follows:

1. Must the savings and time deposits referred to in section 16-2618 (1) be considered equally with other public moneys insofar as the requirements for ratable distribution among banks and for pledging of securities are concerned?

Section 16-2618 (1) reads in part as follows:

“It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, . . . provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use . . . with any bank authorized herein above in a savings or time deposit . . .”

Section 16-2618 (4) reads as follows:

“When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.”

These paragraphs contain the words “deposit all public moneys” and “deposit of county, city or town funds.” In view of the purpose of this section, to distribute all public moneys equitably among the several banks, there is no reason to make a distinction among the various kinds of bank deposits. This statute concerns all public moneys available for deposit. There is no direction in the language of the statute to distribute the moneys according to the nature of the deposit.

Furthermore, the reference to time and savings deposits was added to the original section in 1957 primarily for the purpose of giving financially troubled counties, cities and towns the opportunity to invest surplus money for the production of income. Opinion No. 26, Volume 27, Official Opinions of the Attorney General. Therefore, the total amount of the public moneys available for deposit should be considered when meeting the requirements for ratable distribution and for pledging of securities.

2. When the treasurer makes a ratable distribution of public funds, should an attempt be made to distribute time and demand deposits so each bank will have the same mix of deposits?

The answer to this question is the same as above. The amount distributed ratably among the banks is the entire amount of public funds available for deposit. No distinction should be made based on their nature because the statute does not provide a method of distribution based on the nature of the individual deposits.

3. When there is only one bank in a county, city or town, and that bank is neither willing to accept time deposits nor to pay interest rates comparable to rates paid by banks outside the county, city or town, must the treasurer still deposit all funds in the eligible bank within his governmental unit?

The use of the term "shall" in subsection (1) is mandatory. If a bank is otherwise eligible to receive public moneys and can comply with the statutory requirements, the treasurer must deposit the available funds in that bank regardless of the rate of interest it is willing to pay.

Subsection (5) indicates that it is not obligatory for a bank to accept time deposits. However, if a bank should refuse to accept time deposits, the county commissioners or city council could invest the funds in direct obligations of the United States government and there might then be no loss of revenue. Opinion 26, *supra*.

4. Are the school district funds available for investment under subsection (8) subject to the same requirements as the other public funds deposited by the treasurer?

This question was answered by Opinion No. 10, Volume 31 of the Official Opinions of the Attorney General. In that opinion, it was asked whether school trustees could direct the deposit of school funds in view of the requirements of subsection (4). The opinion stated that the "legislature clearly intended to give school trustees discretion to direct the investing and depositing of school funds." The rationale of the opinion was that the 1965 amendment to section 16-2618, which is subsection (8), provided different treatment for school district funds than for other public moneys under the act. Therefore, these school

18            OPINIONS OF THE ATTORNEY GENERAL

district funds are not subject to the same requirements as the other public moneys described in section 16-2618.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General