

**County Commissioners—Power to Provide for Deposit of Collateral in Lieu of Indemnity Bonds from Depository National and State Banks—Power to Take Part Bond and Part Security.**

Section 3005 of Chapter 88 of the Laws of 1913 construed to require that only public bonds and obligations may be taken by the County Commissioners to be pledged as security for deposits by depository banks.

County Commissioners may require a depository bank to furnish either the entire security demanded in the form of an indemnity bond or in the form of public bonds or other securities, or they may require part of such security to be in the form of an indemnity bond and the remaining portion in the form of public bonds or other public security.

H. S. Whitcomb, Esq.,  
Chairman Board of County Commissioners,  
Malta, Montana.

My dear Mr. Whitcomb:

You have inquired whether banks, including national banks, which are depositories of county funds, may be permitted by the County Commissioners under Chapter 88 of the Laws of 1913 to furnish collateral security in lieu of surety company bonds.

The portion of Section 3003 of Chapter 88 of the Laws of 1913 applicable reads as follows:

"The Treasurer shall take from such banks such security in public bonds or other securities, or indemnity bonds, as the Board of County Commissioners of such County may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand."

It is to be noted that the only security permitted aside from indemnity bonds is "public bonds or other securities." By this is meant public securities. Undoubtedly the foregoing section gives authority to the Board of County Commissioners to provide that either the whole or any part of the entire security demanded may be of any of the kinds mentioned, but only security of the kinds above prescribed may be allowed and approved by the County Commissioners. The term "collateral" may include "public bonds or other securities," but it is frequently used to include matters not within those terms, and the County Commissioners would be unauthorized to accept any collateral not coming within the terms "public bonds or other public securities."

Following are various definitions of "public securities":

Words and Phrases, volume 6, page 5822, taking the definition in part from *United States v. Irwin*, 26 Fed. Cases 544: "The term as used in the legislation of Congress and in its popular acceptance has a fixed and determinate meaning. It is simply a certificate or instrument issued by the proper officer under the authority of law, evidencing the pecuniary indebtedment or liability of the government to the holder. It is sometimes used in the sense of any paper emanating from the government creating on the part of the government an obligation to perform an act and a corresponding right on behalf of an individual."

Black's Law Dictionary: "Bonds, notes, certificates of indebtedness, and other negotiable or transferable instruments evidencing a public debt of a State or Government."

Anderson's Law Dictionary: "Securities issued under legislative sanction in furtherance of works deemed promotive of the interests of the public."

English Law Dictionary: "Evidence of a State's indebtedness. Securities issued by authority of law."

From the language of the statute quoted and the foregoing definitions it is apparent that only public bonds and obligations may be permitted by the County Commissioners to be pledged as security for deposits by depository banks.

National banks are under no different restrictions from those applicable to State banks with respect to pledging their assets for the purpose of securing public deposits, and either may pledge their securities of the kinds above prescribed for that purpose in accordance with the requirements of Chapter 88 of the Laws of 1913.

It is, therefore, my opinion that the County Commissioners may require a depository bank to furnish either the entire security demanded in the form of an indemnity bond, or in the form of public bonds or other securities, or they may require part of such security to be in the form of an indemnity bond and the remaining portion in the form of public bonds or other securities, and that such securities must be limited to public securities as defined in the foregoing definitions.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.