

County Treasurer—Amount of Money He May Carry Without Interest.

A County Treasurer should not keep in the fund for "current business" more money than is reasonably necessary for such purposes. The sum of \$30,000 is an extraordinarily large sum to be kept by the County Treasurer for "current business."

A County Treasurer must deposit all of the public money in his possession, except the fund for "current business," and collect $2\frac{1}{2}$ per cent interest thereon upon the daily balances.

A County Treasurer may not deposit his "current business" fund in a bank without collecting interest thereon.

H. F. Miller, Esq.,
County Attorney,
Fort Benton, Montana.

My dear Mr. Miller:

You have requested my opinion relative to what amount of the public funds a County Treasurer may carry in his fund for current business and upon which no interest is collected. You also ask for a review of Attorney General's opinion on this subject found in Volume 7, on page 191, Opinions of Attorney General.

I have carefully examined the opinion referred to and am in full accord therewith.

You inquire especially as to the interpretation to be placed upon the latter part of said opinion, in which the statement is made that "the County Treasurer should keep on hand in his office sufficient in cash for the ordinary transaction of business, such as making change and cashing warrants, and the amount of such cash will depend upon the volume of business and the particular time of the year or month."

Section 3003, Revised Codes of 1907, as amended by Chapter 88, Laws of 1913, makes it the duty of the County Treasurer to deposit all public funds in his possession or control in certain designated banks, which shall give security for the safe-keeping of the said funds and pay 2½ per cent interest thereon, and this applies to all public funds, "excepting such as may be required for current business."

In the last part of said section appears the following:

"Where moneys shall have been deposited in accordance with the provisions of this Act, the treasurer shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct."

The converse of this is that he is liable for the loss of public funds not deposited by him in compliance with the Act of the Legislature above.

The amount necessary for him to keep in his hands for "current business" must be determined by the Treasurer himself in the exercise of his sound business judgment, but for the safe-keeping of that amount he is liable on his official bond, and it makes no difference whether he has it in the till or vault of his office, or in a bank and not deposited according to the provisions of Section 3003, above, as amended. See *Yellowstone County v. First Trust & Savings Bank*, 46 Mont. 439, 128 Pac. 596.

I also wish to call your attention to another part of said Section 3003 as amended, to wit:

"Any bank or banks receiving such deposits shall, through its President and Cashier, make a settlement quarter-annually of account under oath, showing all such moneys that have been deposited with such bank during the quarter, *the amount of daily balances in dollars, and the amount of interest by such bank or banks credited or paid therefor*, and showing that neither such bank, nor any officer thereof, nor any person for it, has paid or given any consideration or emolument whatsoever to the treasurer or to any other person other than the interest provided for herein, for or on account of the making of such deposits with any such bank."

You will note the requirement for daily balances above. This, together with the fact that the 2½ per cent per annum interest is payable quarterly-annually, would indicate that the Legislature, in amending Section 3003, above, intended that the bank should pay interest on all public moneys deposited therein based on the daily balances of the account.

The purpose in requiring the deposit of the public funds was not only the safe-keeping thereof, but that the public might receive the benefit of the accruing interest, and, therefore, the County Treasurer

would have no right to enter into any agreement with a bank by which he could deposit part of the public moneys therein without drawing interest.

It would seem that \$30,000 was an extraordinarily large sum to be kept by the Treasurer for "current business," and it is doubtful whether the Legislature anticipated the retention of so large a fund when it amended Section 3003 as above. For his own protection, the Treasurer should not keep in this fund any more than is reasonably necessary for the purpose provided.

It is my opinion that the County Treasurer must deposit in designated banks all the public money in his possession, except the fund for current business under the provisions of Section 3003, above, as amended, and that he must collect $2\frac{1}{2}$ per cent interest thereon as determined by daily balances; and that he has no authority to deposit his current business fund in a bank without collecting interest thereon.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.