

**Public Funds—Depository Bonds—Whether Foreign Corporation May be Accepted as Surety on Bond for Deposit—Liability of County Commissioners.**

A bond executed by a foreign corporation, not authorized to do business in this State, cannot be accepted as a surety bond in this State.

County Commissioners may be held personally responsible in the event of loss should they accept such a bond.

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

My dear Mr. Miller:

You have submitted to this office the question of whether a foreign corporation, not authorized to do business in this State, can be accepted as surety on a bond covering a deposit of public funds under the provisions of Section 1 of Chapter 88 of the Laws of 1913, which provides that:

“It shall be the duty of the county treasurer to deposit all public moneys in his possession and under his control \* \* \* in any solvent bank or banks located in his county subject to National Supervision or State examination, as the Board of County Commissioners shall designate and no other. \* \* \* 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.”

An inquiry at the office of the Commissioner of Insurance discloses the fact that this company is not authorized to do business in the State of Montana as a surety company, and, therefore, it has not complied with Section 6206 of the Revised Codes of 1921 which provides:

"Any company with a paid-up capital of not less than two hundred and fifty thousand dollars, incorporated and organized under the laws of any state of the United States for the purpose of transacting business as surety on obligations of persons or corporations, and which has complied with all the requirements of the law regulating the admission of such companies to transact business in this state, may be accepted as surety upon the bond of any person or corporation required by the laws of this state to execute a bond."

As the Bankers Investment Company, being the company offering the bond, is not authorized to do business in the State of Montana as a surety company, and therefore, has not qualified under the provisions of Section 6306, supra, it is my opinion that any bond executed by this company could not be accepted as a surety bond in this State; and that, under such circumstances, the County Commissioners might be held personally responsible should they accept such a bond and a loss of public funds should occur in a depository bank furnishing such bond.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.