

**School District Funds—On Deposit in Insolvent Bank—  
Loss Borne by Whom.**

The loss sustained by reason of a deposit of school district funds through the failure of a depository bank must be borne by the school district until made good by the bonds or other securities given by the bank for the purpose of securing the deposit.

Miss May Trumper,  
Superintendent of Public Instruction,  
Helena, Montana.

My dear Miss Trumper:

You have submitted to me the following question:

“May a County Treasurer charge the loss of deposits of school funds in case of bank failure to the school district; or, stated otherwise, is the County Treasurer responsible to the school districts for funds lost through a bank failure?”

The following sections of the statute are apparently the only provisions applicable:

Subdivision 1 of Section 2010 of Chapter 76 of the Laws of 1913 provides as follows:

"It shall be the duty of the county treasurer of each county.

"To receive and hold all school moneys as special deposit and to keep a separate account of their disbursements to the several school districts which shall be entitled to receive them according to the apportionment of the county superintendent."

Also Section 1, Chapter 88 of the Laws of 1913, which provides:

"That Section 3003 of the Revised Codes of Montana, of 1907, be and the same is hereby amended to read as follows:

"Section 3003. It shall be the duty of the county treasurer to deposit all public moneys in his possession and under his control, excepting such as may be required for current business, 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, and the sums so deposited shall bear interest at the rate of two and one-half ( $2\frac{1}{2}$ ) per centum per annum payable quarterly-annually. 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. \* \* \*

"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."

In each of the cases cited below there was a loss or shortage involving funds in which various public agencies or departments of government had an interest, and it was uniformly held that the losses should be prorated.

Territory ex rel Goodrich v. Bashford, 12 Pac. 671;

Boaz v. Ferrell, 152 S. W. 200;

Co. Commissioners v. City of Springfield, 36 Ohio St. 643;

See also:

15 C. J. 590, notes 83 and 86.

The conclusion from the foregoing is that school moneys are public funds which the County Treasurer is authorized and required by law to keep in his custody and control and disburse upon warrants of the district and deposit in depository banks, and that in this regard they are not different from county funds of which the law makes him the custodian; and that where a loss has been sustained through a bank failure, if funds of the district were included with those of the county in the bank at the time of its failure, the loss would have to

be sustained by the district until made good by the bonds or other securities given by the bank for the purpose of securing the deposit by the County Treasurer of the public funds in his possession.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.