

Counties—Deposits—Preferred Claims—Claims—Banks and Banking—Funds—Insolvent Banks.

The county is entitled to a preferred claim as against the general creditors of a defunct bank where the county treasurer has deposited the county funds unlawfully.

Shebel Rehal, Esq.,
County Clerk and Recorder,
Chester, Montana.

September 14, 1926.

My dear Mr. Rehal:

You have requested my opinion on the following question:

"The county treasurer of Liberty County had on deposit in the First State Bank of Chester on Dec. 25th, 1920, \$51,206.23. The bank closed its doors on that date and a receiver was appointed. The amounts of bonds to secure these deposits at that time were as follows: Jan. 12, 1920, continued bond of a surety company to the amount of \$15,000.00, Dec. 10, 1920, two personal bonds to the amount of \$25,000.00, and Jan. 9, 1921, or after the bank closed, a bond to the amount of \$5,000. A demand was made on the receiver of the bank and on the sureties for the payment of this amount and upon refusal to do so a suit was entered against the sureties for the recovery of the amount deposited in the bank to the extent of their liabilities on the above bonds, and a judgment obtained. Can the county establish a claim against the receiver of the bank to have the amount of its deposits not fully covered by bonds declared a preferred claim, in accordance with the provisions of section 3003 R. C. M. 1907?"

Section 3003 R. C. M. 1907, referred to by you, was amended by section 1, chapter 88, laws of 1913, and now appears as section 4767 R. C. M. 1921, while this section has been amended by the laws of 1923 and again by the laws of 1925. All of the deposits in question were made, or should have been made, in accordance with section 4767, supra, which provides in part as follows:

"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 per centum per annum, payable quarter-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. * * *

"All such deposits shall be subject to withdrawal by the treasurer in such amounts as may be necessary from time to time, and no deposit of funds shall be made, or permitted to remain in any bank, until the security for such deposits shall have been first approved by the board of county commissioners and delivered to the treasurer. * * *"

In the case of *Yellowstone County v. First Trust and Savings Bank*, 46 Mont. 439, our supreme court held that "the sum deposited unlawfully constituted a trust fund in the hands of the receiver to which the county was entitled in preference to the general creditors of the bank." See also *State ex rel. City of Cut Bank v. McNamer*, 62 Mont. 490; *Bignel et al v. Cummins, Receiver*, 69 Mont. 294.

It is, therefore, my opinion that as to all money deposited contrary to the provisions of section 4767 R. C. M. 1921, the county has a preference right which can be enforced against the receiver, and that the judgment obtained against the sureties on the bond would not affect this right as to the money unlawfully deposited.

Very truly yours,

L. A. FOOT,
Attorney General.