School Districts—Interest—School Funds.

School districts are not entitled to interest on school funds held by county treasurer and deposited by him in depository banks under Section 4767, R.C.M., 1921, as amended by Chapter 134, Laws of 1927.

Miss Elizabeth Ireland, December 17, 1929.
State Superintendent of Public Instruction,
Helena, Montana.

My dear Miss Ireland:

You have submitted to me a letter from Charles E. Farnsworth, Clerk, Anaconda Public Schools, in which he wishes to know whether the school district is entitled to receive interest on deposits of school funds which are made by the county treasurer in depository banks.

Section 4767, as amended by Chapter 134, Laws of 1927, provides the method for depositing all public moneys in the hands of county, city, and town treasurers in some solvent bank or banks located in the county, city or town, subject to national supervision or state examination, which banks are required to give the securities mentioned in the act. The act further provides that "all interest paid and collected on such deposits shall be credited to the general fund of the county, city, or town to whose credit such funds are deposited."

In the case of State vs. McGraw, 74 Mont. 152, our Supreme Court had under consideration the liability of the county for loss of school funds deposited in a bank that afterwards became insolvent. The court held that "the responsibility for the safekeeping of school funds, theretofore imposed upon the county treasurer and his sureties, is entirely removed upon compliance by the treasurer with the requirements of this last enactment on the subject; by this act the treasurer is made the mere instrumentality of the county for the transfer of all public moneys, which term includes school district funds, irrigation district funds, moneys coming into the hands of the public administrator and trust funds deposited with the clerk of the district court. * * * The aggregate of all of these funds with the regular county moneys is there-

upon considered and defined as 'county funds', and no one aside from the county is held to any degree of responsibility for their safekeeping or protection as against the county depository."

The court further said: "It will also be seen that this burden is not imposed upon the county without recompense, for, under the Act, this 'county fund' now bears interest at the rate of two (2) per cent per annum, and the whole thereof is credited by the county to its general fund."

It follows that a school district is not entitled to any part of the interest on the school district funds which are deposited by the county treasurer in depository banks.

Very truly yours,
L. A. FOOT,
Attorney General.