

VOLUME NO. 35**Opinion No. 18**

BANKS AND BANKING — Public funds, deposit of surplus funds, ratable distribution, interest rates; CITIES AND TOWNS — Funds, deposit of surplus funds, ratable distribution, interest rates; COUNTIES — Funds, deposit of surplus funds, ratable distribution, interest rates. Sections 16-2050 and 16-2618, R.C.M. 1947; Chapters 298 and 499, Montana Session Laws, 1973.

HELD: 1. In order to qualify for the ratable distribution of surplus public moneys in time and savings deposits pursuant to section 16-2618, R.C.M. 1947, a bank must pay on the public moneys deposited the same rate of interest paid on money from private sources deposited on the same terms.

2. Chapter 298, Montana Session Laws, 1973, does not restrict or prevent the investment of public funds which qualify for investment under the provisions of sections 16-2050 and 16-2618, R.C.M. 1947, nor do sections 16-2050 and 16-2618 restrict or prevent the investment of public funds which qualify for investment under the provisions of Chapter 298, *supra*.

July 30, 1973

Mr. Harold F. Hanser
Yellowstone County Attorney
County Courthouse
Billings, Montana 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

Whether or not the legislation passed by the 1973 legislature, namely House Bill No. 396, Chapter 421, Montana Session Laws of 1973, which amends section 16-2050 of the Revised Codes of Montana, 1947, Chapter 421 of the Session Laws of 1973 relating to the unified investment program, and Senate Bill No. 183 which became Chapter 499 of the Laws of the State of Montana change the requirements of section 16-2618 (4), Revised Codes of Montana, 1947.

Section 16-2618 (4), Revised Codes of Montana, 1947, provides:

When more than one bank is available in any county, for the deposit of county funds, or in any city or town for the deposit of city or town funds, such deposits shall be distributed ratably among all of such banks qualifying therefor, substantially in proportion to the paid-in capital and surplus of each such bank willing to receive such deposits under the terms of this act, and it shall be the duty of said county, city or town treasurer to prorate all such deposits among all of the banks qualified to receive the same as in this act provided, to the end that an equitable distribution of such deposits shall be maintained.

Subsection (1) of section 16-2618, *supra*, was amended by Chapter 499, Montana Session Laws, 1973, to read as follows:

It shall be the duty of all county, city and town treasurers to deposit all public moneys in their possession and under their control in any solvent bank or banks located in the county, city or town of which such treasurer is an officer, subject to national supervision or state examination as the board of county commissioners in the case of a county, or of the council in the case of a city or town, may designate, and no other. The treasurer shall take from such bank such security as the board of county commissioners, in the case of a county, or the council in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits, provided that said board of county commissioners or city or town council is hereby authorized to deposit such public moneys not necessary for immediate use by such county, city or town with any bank authorized herein above in a savings or time deposit; **provided that the bank or banks in which the money is deposited shall pay on the moneys the same rate of interest as is paid on money from private sources on the same terms. Refusal of any bank to pay said interest rate shall constitute a waiver of that bank's right to participate in the ratable distribution of said moneys as set forth in subsection (4) of this act,** and provided that said board of county commissioners, or city or town council is hereby authorized to invest such public moneys not necessary for immediate use by such county, city or town, in direct obligations of the United States government,

payable within not to exceed one hundred eighty (180) days from the time of such investment. (Emphasis supplied)

The emphasized portion of section 16-2618 (1), *supra*, modified the effect of subsection (4) of that section concerning ratable distribution. While the amendment does not allow a county, city or town treasurer to "shop around" for the best interest rate among banks within his county, it does provide that deposits of county, city or town funds will receive the same interest rate as would funds from private sources. Thus, a bank paying 5% interest on savings left for ninety days received from its private customers would be obliged to pay the same rate of interest to a county for public moneys left for the same period of time. Failure to do so would constitute a waiver on the part of the bank to receive its prorated share of deposits from public moneys as provided for in section 16-2618 (4), *supra*.

The amendment to section 16-2050, R.C.M. 1947, as set forth in Chapter 421, Montana Session Laws, 1973, to which you refer, provides:

No provision of this section may be construed to prevent the investment of county, school district, or county high school moneys under the state unified investment program established in title 79, chapter 3.

This amendment applies only to section 16-2050, *supra*, and makes no mention of section 16-2618, *supra*. However, the state unified investment program established in Title 79, chapter 3, referred to in the above-quoted amendment, does affect the investment of county, city and town funds.

Chapter 3 of Title 79, R.C.M. 1947, was amended by Chapter 298, Montana Session Laws, 1973. Section 8 of Chapter 298, *supra*, is of particular interest here since it involves the investment of local government funds. That section provides in pertinent part:

(1) The governing body of any city, county, school district, or other local government unit or political subdivision having funds which are available for investment, and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner, may direct its treasurer to remit such funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

Chapter 298, *supra*, was passed pursuant to the mandate contained in Article VIII, section 13, Constitution of Montana, 1972, which provides in part:

(1) The legislature shall provide for a unified investment program for public funds and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. ...

Pursuant to the provisions of sections 16-2050 or 16-2618, *supra*, local government units empowered to do so may choose to invest surplus funds not needed for immediate use. However, as a result of the enactment of Chapter 298, *supra*, local government units are no longer limited to the methods of investment of surplus funds specified in sections 16-2050 and 16-2618, but may now choose to invest such funds under the unified investment program.

As a matter of clarification it should be noted that this opinion does not limit the holding in 34 **Opinions of the Attorney General**, no. 60.

THEREFORE, IT IS MY OPINION:

1. The provisions of section 16-2618 (4), R.C.M. 1947, were modified by Chapter 499, Montana Session Laws, 1973, in that to qualify for the ratable distribution of public moneys in time and savings deposits pursuant to section 16-2618, *supra*, a bank must pay on the moneys deposited the same rate of interest paid on money from private sources on the same terms.

2. Chapter 298, Montana Session Laws, 1973, does not restrict or prevent the investment of public funds which qualify for investment under the provisions of sections 16-2050 and 16-2618, R.C.M. 1947, nor do sections 16-2050 and 16-2618 restrict or prevent the investment of public funds which qualify for investment under the provisions of Chapter 298, *supra*.

Very truly yours,

ROBERT L. WOODAHL
Attorney General