

Treasurer, County, May Deposit Money. Interest, County Entitled To. School Trustees, Appointing Of.

1. The county may deposit money with a bank and receive from the bank interest on the daily balances, for the reason that there is no law preventing the same, and it is the duty of the County Treasurer whenever he can deposit with a bank that furnishes good and sufficient bond to so deposit the county funds. The interest on said deposits belongs to the county and should be apportioned among the several funds according to the amount of each fund so deposited.

2. When two candidates for school trustee, neither of whom has complied with the law relative to their nomination, receive an equal number of votes, the old member of the school board does not hold over but it is the duty of the County Superintendent to name a school trustee to fill the vacancy.

Helena, Montana, July 1, 1907.

Hon. George A. Horkan,
County Attorney,
Forsyth, Montana.

Dear Sir:—

We have your request for an opinion, asking whether or not the County Treasurer may designate some bank as a county depository and receive interest on daily balances for the benefit of the county.

The law does not allow county treasurers to loan money in his own name nor in the name of the county, but it may deposit the county funds in banks as provided for by the law, (Sec. 4367, Pol. Code) with which you are familiar. If the bankers see fit to pay interest in consideration of their bank being designated as the county depository, and pay the interest for the benefit of the county, then I should say that the county may accept the same. In other words, in view of the fact that the County Treasurer is not prevented by law from making such a contract, no one in the county can object to such a course, and we think that the taxpayers of your county would surely approve such a course on the part of their County Treasurer. If he can make such terms as your letter indicates, to-wit, that the banks will pay three per cent. on daily balances, to be paid quarterly, then it is our opinion that it is clearly his duty to make such arrangements with them. Such a deposit is not unlawful.

We desire to call your attention to certain matters which are essential in connection therewith.

First; the bank designated as county depository must be compelled to give good and sufficient bond in double the amount deposited, signed by three or more good and sufficient sureties, which bond must be approved by the Board of County Commissioners and filed with the county clerk of the county, and, secondly, all moneys collected as interest must be turned into the county and placed in the proper fund. The said interest being an accretion or increment to each fund, increasing the same by the amount of interest thus paid, becomes absolutely the property of the county as much as the principal itself.

State vs. McFetridge, et al. 84 Wis. page 474.

As to your second question, relative to the construction to be placed on Section 1980, Pol. Code, we take pleasure in confirming the opinion by you written, and hold that at a school election where an equal number of votes are cast for each of two candidates for school trustees, neither of the candidates have complied with the law as to their nomination, that the old member of the school board does not hold over, but it is the duty of the County Superintendent of Schools to appoint a school trustee to fill the vacancy caused by the failure to elect.

Very truly yours,

ALBERT J. GALEN,

Attorney General.