

**State Depository, Held Not State Official. State Official,
State Depository Not. Banks, As State Depositories. Bonds,
Furnished by Banks to Secure State Deposits.**

A bank acting as a state depository is not to be considered a state official and hence does not come within the provisions of Senate Bill No. 44 of the Twelfth Legislative Assembly, which provides that public officials may furnish surety bond, the premium on such bond being a proper charge against the general fund of the state.

April 6th, 1911.

Hon. E. E. Esselstyn,
State Treasurer,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of April 5th, 1911, wherein you submit for my official opinion, the question as to whether a bank acting as a state depository is to be considered a "state official" under the provisions of senate bill, No. 44, which provides that public officers may furnish either a surety bond or a bond signed by individual surety, and that in the event that such public officer files a bond executed by a surety company that the premium on such bond shall be a proper charge against the general fund of the state, county or city, as the case may be.

Section 3, of senate bill, No. 44, provides that when an official bond is required of any state, county or city officer, such officer may furnish a surety bond, or a sufficient individual bond to be approved by the officer or board authorized to approve such official bond. And the same section further provides that where "such officer" shall furnish a surety bond the premium is a public charge.

You are advised that a bank acting as a depository of state funds, is not a public official such as is contemplated by senate bill, No. 44. Public offices are created either by virtue of the constitution or statutory enactment. The constitution and laws provide qualifications for public officials, among them, that a public officer must be a qualified elector presupposes certain other qualifications, which an artificial person could not possibly have, as for instance, qualified elector must be a male citizen of the United States, resident of the state of Montana for one year, and of the age of twenty-one years. A corporation could not, therefore, by any possibility become a public official, and if a corporation furnishes a bond running to the state or to a state officer for the faithful performance of certain obligations, that bond is not covered by the provisions of senate bill, No. 44.

Yours very truly,

ALBERT J. GALEN,
Attorney General.