

Public Moneys, Deposit of. Current Business, What Is.

The statute not being specific in defining the period of time to be taken into account by the treasurer in estimating the amount of money to withhold from deposit, for current business, the treasurer is generally within his rights in withholding a sufficient amount to pay current expenses of the county for one quarter. And since he may keep the amount estimated by him as necessary for current expenses in any place he sees fit, he cannot be made to account for interest upon it. This privilege, however, cannot be made use of to the profit of the county treasurer.

August 25th, 1913.

Hon. H. S. McGraw,
State Examiner,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 17th instant, submitting the question:

"How shall the term 'current business,' as used in Sec. 1, Chap. 88, Laws of 1913, be construed as to time?"

The section above referred to merely provides that it is the duty of the county treasurer to deposit all public moneys, "excepting such as may be required for current business," but does not attempt to define the term "current business," nor does it give any specific direction as to the time which may be taken into account by the treasurer when estimating the amount of money which he may withhold for such current business. A very similar question was considered by this department in an opinion addressed to Hon. Victor R. Griggs, county attorney of Hill County, in which it was held that the treasurer was generally within his rights when he withheld

money from deposit for the payment of the current expenses of the county for one quarter. A copy of this opinion is herewith enclosed for your consideration. In view of the fact that the statute is not specific in defining the period, it is impossible to establish any hard and fast rule or to name any particular specific time. The treasurer is supposed to act for the best interests of the county and if he knowingly withholds more money from deposit than will be required for the use of the county, he would be guilty of violating his duty and probably be liable to the county for the interest on the surplus money so held; and, on the other hand, if he at any time receives any income by way of interest or otherwise on the money he withholds, he should account to the county for such income, for no public official is permitted to make a profit out of public moneys.

Upon the further question of whether money designated as money for current expenses shall draw interest in the event the same is deposited in a bank, I am of the opinion that under the law as it stands the treasurer can not be held responsible for interest on such funds. The language of the act is 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."

The obvious meaning of this language is that the treasurer is not required to deposit the money required for current business in any bank. He is at liberty to keep it in any place which may appeal to him as being safe, and if he is not required to deposit it he cannot be charged with interest upon it. The reasonableness of his estimate of what the current expenses will be for a given quarter or what amount must be withheld therefor is likewise a question of fact to be determined from the particular circumstances of each case. It certainly would not be within the spirit or intent of the law for a county treasurer to withhold from the interest bearing deposit twice or three times as much money as experience would dictate to be necessary for current expenses. Such a practice, if done to evade the law or for the purpose of gaining a profit from the surplus so deposited, would render him liable for the penalties above referred to

Yours very truly,

D. M. KELLY,
Attorney General.