

Deposits—Banks and Banking—County Commissioners—Insolvent Banks—Reorganization.

County commissioners are without authority to agree to leave county funds on time deposit in an insolvent bank upon its reorganization.

W. H. Gray, Esq.,
County Attorney,
Libby, Montana.

October 17, 1925.

My dear Mr. Gray:

You have requested my opinion whether the board of county commissioners has authority to make an agreement whereby county moneys on deposit in an insolvent bank may be agreed to be made payable one-fourth in one, two, three and four years respectively.

Under section 4767, R. C. M. 1921, as amended, the county treasurer must deposit all public moneys in any bank designated by the county commissioners. This section further provides as follows:

"The treasurer shall take from such banks such security in public bonds or other securities, or indemnity bonds, as the board of county commissioners of such county may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand."

This section of the statute makes special provision for the deposit of such funds and contemplates that the funds must be deposited so as to be payable on demand.

I do not believe that the general provisions of subdivisions 22 and 25 of section 4465, R. C. M. 1921, empower the county commissioners to authorize a deposit of public funds in any other manner than according to the special provisions of section 4767, above referred to.

Your attention is also called to the case of *Jefferson County vs. Lineberger*, 3 Mont. 231, 242, et seq. In that case the defendant set up as a defense to an action on his official bond that a compromise had been made by the county commissioners. During the course of the opinion in that case the court said:

"They cannot compromise with a delinquent, for they are required to prosecute him. If Mr. Lineberger by reason of robbery, or for any other reason failed, upon legal demand, to account for and pay over the county funds as directed by the law,

he was a defaulter, and the imperative duty of the commissioners, upon being informed thereof, was to prosecute such delinquent upon his official bond, and to compromise with a defaulter under such circumstances would, upon the part of the commissioners, be a gross violation of the letter of the statute and of their duty."

It would seem that the same reasoning applies to this case and that the imperative duty of the commissioners is to prosecute the sureties on the bonds furnished to secure the deposits.

Your attention is also called to section 39 of article V of the constitution. There is considerable doubt in my mind as to whether such an agreement would escape the provisions of that section of our constitution.

It is, therefore, my opinion that the board of county commissioners has no authority to enter into the proposed agreement.

Very truly yours,

L. A. FOOT,
Attorney General.