

Deposits—Banks and Banking—Bonds—Security—Counties.

Deposits of county moneys to replace withdrawals cannot be made under personal bonds under chapter 137, laws of 1925.

John J. Cavan, Esq.,

October 19, 1925.

County Attorney,

Jordan, Montana.

My dear Mr. Cavan:

You have requested my interpretation of chapter 137 of the laws of 1925.

You state that on March 10, 1925, the county had about \$73,000 on deposit in a bank secured by \$25,000 in liberty bonds and \$50,000 in

personal bonds. You also state that since March 10, 1925, additional deposits have been made, and that withdrawals have been made from time to time, and that now there is about \$62,330.01 on deposit in the bank in question.

You request that I either confirm or reverse your opinion under these facts and state your opinion as follows:

"I am of the opinion that the \$50,000 on deposit on March 10th, 1925, and secured by personal bond remains intact, and that the \$25,000 secured by liberty bonds, in like amount, is security for any balance that remains over and above the \$50,000."

This office has interpreted the last three lines of section 2, chapter 137, laws of 1925, as prohibiting any deposit under a personal bond after the effective date of the statute; that is to say, if money was secured by a personal bond only at the time the act took effect, deposits thereafter made, even though not in excess of withdrawals, could not be made without additional security in the form prescribed by statute.

What then is the effect of having the \$25,000 security in the form of liberty bonds?

In the absence of any different intention manifested by the contracts made by the respective sureties each is liable for the payment of the entire amount of the deposit up to the limit of the liability assumed by each; that is to say, the \$25,000 of liberty bonds, unless the agreement provides otherwise, is liable for any part of the deposit up to the amount of \$25,000, and in the event of the failure of the bank at the present time with \$62,000 on deposit it would not do for the owner of the liberty bonds to say that they were liable only for \$12,000, or the amount over and above the \$50,000 secured by personal bonds.

The owner of the liberty bonds, of course, would be entitled to contribution from the sureties on the personal bonds. (21 R. C. L. p. 1131, sec. 168.)

My conclusion, therefore, on the question submitted by you is: *First*, all moneys on deposit in excess of \$25,000 on March 10, 1925, were protected by personal bonds only; *second*, the personal bonds were subject to renewal; *third*, when withdrawals were made subsequent to March 10, 1925, leaving the balance in the bank still in excess of \$25,000, deposits could not be made without additional security of the class and character designated by statute (other than personal bonds).

Very truly yours,

L. A. FOOT,
Attorney General.