

Irrigation Districts — Bonds — Funds — Security — County Treasurer.

Irrigation district bonds, when approved by the irrigation district bond commission, may not be accepted by the county treasurer as security for public deposits.

C. S. Heidel, Esq., January 2, 1926.
Chairman, Irrigation District Bond Commission,
Helena, Montana.

My dear Mr. Heidel:

You have submitted to this office for an opinion the question whether bonds of an irrigation district, after the district has been approved by the irrigation district bond commission, may be used as security for the deposit of public funds.

You refer to section 4767, R. C. M. 1921, as amended by chapter 89, laws of 1923, and chapter 137, laws of 1925. You also have called attention to the provisions of section 7225, R. C. M. 1921, relating to legal investment of trust funds. This section is as follows:

“All bonds certified in accordance with the terms of this act shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings,

and trust companies, and for the state school funds, and whenever any money or funds may, by law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school districts, or municipalities in the state of Montana, such money or funds may be invested in the said bonds of irrigation districts, and whenever bonds of cities, cities and counties, counties, school districts, or municipalities may, by any law now or hereafter enacted, be used as security for the performance of any act, bonds of irrigation districts under the limitations in this act provided may be so used."

Section 4767, R. C. M. 1921, prior to its amendment, insofar as applicable, provided:

"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."

There can be little doubt that under the provisions of this section as it existed prior to its amendment by chapter 89, laws of 1925, irrigation district bonds could be used as security for the deposit of public funds.

Chapter 89, above referred to, amended section 4767 as follows:

"The treasurer shall take from such banks such security as the board of county commissioners, in the case of a county, or the council, in the case of a city or town, may prescribe, approve and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits on demand together with the interest thereon. Such securities shall consist of bonds of some surety company empowered to do business in the state of Montana, government bonds or securities, state bonds or warrants, county bonds or warrants, or such other bonds or securities which are supported by general public taxation."

Under this amendment irrigation district bonds could no doubt be included as they constitute bonds or securities supported by "general public taxation."

In 1925 the legislature again amended section 4767 with regard to the character of securities that must be accepted to guarantee public deposits as follows:

"Such securities shall consist of bonds of some surety company authorized to do business in the state of Montana, bonds and securities of the United States government and its dependents; bonds and warrants of the state of Montana or of any county, city, town or school district of Montana."

Here we have a statute dealing with a special subject, to-wit, security for deposit of public funds, which specifically enumerates the character of securities that must be accepted and by enumeration expressly excludes all others not included in the enumeration.

It is to be noted that the provision in chapter 89, permitting the acceptance of "other bonds or securities which are supported by general public taxation," was omitted in the later amendment.

The question then presented is whether section 7225, which deals with the investment of irrigation district bonds generally, is in conflict with the provisions of section 4767, as amended by chapter 137, laws of 1925, dealing specially with the subject of securities that must be accepted to guarantee deposits of public funds.

It is a well settled rule of statutory construction that where one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite way, the two must be read together and harmonized, if possible; to the extent of any necessary repugnancy between them, however, the special will prevail over the general statute. (State ex rel. Daly vs. Dryburgh, 62 Mont. 36, 203 Pac. 508.)

And a further rule is that where a statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite way, the latter will prevail over the former to the extent of any necessary repugnancy between them, as it will also where it is enacted later than the general one, in which event it will be regarded as an exception to or qualification of the prior general act. (Regan vs. Boyd, 59 Mont. 453, 197 Pac. 832.)

While it is true that repeals by implication are not favored, and that all statutory provisions upon the same subject must be taken into account and given some effect where they are not in express conflict, yet it seems that by the amendment of section 4767 by chapter 137, laws of 1925, it was clearly the intention of the legislature to limit securities to those expressly enumerated and is equivalent to saying that only surety bonds, bonds and securities of the United States government and its dependents, bonds and warrants of the state of Montana or of any county, city, town or school district shall be used, and none other.

It is, therefore, my opinion that the provisions of section 7225, R. C. M. 1921, should not be read into the provisions of chapter 137, laws of 1925, and that it was the intention of the legislature to limit securities required to be deposited to those enumerated in chapter 137.

Very truly yours,

L. A. FOOT,
Attorney General.