

**Banks and Banking—Counties—Trustees—Deposits.**

Where two banks merge and become one legal entity, then the first bank cannot continue to act as trustee of the securities of the second bank; if, however, the two banks continue to operate as separate legal entities and the only merger is that a third corporation is the holder of stock in both banks, it would be otherwise.

True Ray, Esq.,  
County Treasurer,  
Chester, Montana.

December 11, 1929.

My dear Mr. Ray:

You have requested my opinion on the following questions:

“Where a bank is acting as trustee of the securities of another bank placed with the bank to secure the deposit of county

funds and the two banks merge, can the first bank still continue to act as trustee of such securities?

“In case there is no bank in the county and more than one bank is designated by the commissioners outside of the county, does Chapter 49, of the Laws of 1929, mean that the money must be pro rated the same as if the banks were in the county?” Chapter 49, of the Laws of 1929, provides in part as follows:

“Provided, further, that when negotiable securities are furnished, such securities may be placed in trust and the trustee’s receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer, his successors and the State of Montana, and the form of receipt and the trustee have been approved by the State examiner.”

It was not the intention of the law that a bank should act as trustee of his, or its own, security, and it is therefore my opinion that where the two banks merge and become one legal entity that the first bank cannot continue to act as trustee of the securities in question. If, however, the two banks continue to operate as separate legal entities, and the only “merger” is that a third corporation is the holder of stock in both banks, so that in fact there is no merger of their entities, business and affairs, it would be otherwise.

In answer to your second question, will say that there is no provision in Chapter 49, supra, requiring the pro rating of county funds in banks outside of the county.

Very truly yours,  
L. A. FOOT,  
Attorney General.