

Deposits—Counties—Banks.

Where moneys are deposited in banks located outside the depositing county deposits need not be prorated according to capital and surplus.

Mr. G. M. Robertson,
State Examiner,
Helena, Montana.

June 24, 1931.

My dear Mr. Robertson:

You have requested my opinion whether, under the county depository act, deposits must be distributed according to the capital and surplus of the banks in which deposits are made when there are no banks in the county and the county funds are deposited in banks outside the county approved by the board of county commissioners.

Chapter 49, laws of 1929, amending section 4767, R.C.M. 1921, as theretofore amended, provides for the deposit of public moneys by the county treasurer in such banks as are located in the county and which qualify under the provisions of the act, and when there is more than one bank available in the county for the deposit of the county's funds that the deposits shall be distributed ratably among all of the banks qualifying, substantially in proportion to the paid in capital and surplus of each such bank so qualified. The act further provides that if there is no

bank in the county, or if the banks of the county fail to qualify to receive such deposits then the county moneys shall be deposited in the bank or banks most convenient to the county willing to accept such deposits under the terms of the act and who qualify as provided therein.

In my opinion, the provision for the prorating of the deposits applies only when deposits are made in banks located within the county making the deposit. This prorating provision applies only to those banks which are willing to receive such deposits and have the right to a pro rata share thereof upon qualifying under the terms of the act. Only such banks as are located within the depositing county have this right.

A bank located outside the depositing county might be willing to receive the deposits and qualify but it has no right to receive a deposit unless it is the most convenient to the depositing county and there are no banks in the county or those within did not qualify to receive all of the deposits. As these banks outside the county do not have the right to receive a deposit of the county funds merely by qualifying under the act but only upon the aforesaid contingencies, and inasmuch as the pro rata provision applies only to those banks which have the right to a deposit upon qualifying, without regard to said contingencies, it is apparent that the pro rata provision applies only to those banks located within the county making the deposit and not to those located without.

Very truly yours,

L. A. FOOT,
Attorney General.