

## Interest Rate — Deposits — Depositories — Banks and Banking—Counties—County Commissioners.

The fixing of the rate of interest to be paid upon county deposits in a bank is the prerogative of the board of county commissioners and not of the banks. If any bank in the county refuses to pay such rate of interest the board should not designate such bank as a county depository.

Mr. George M. Robertson,  
State Bank Examiner,  
Helena, Montana.

March 17, 1931.

My dear Mr. Robertson:

You have submitted to this office two inquiries:

"1. Who has the right to determine the rate of interest that shall be paid upon county deposits, the banks or the board of county commissioners?

"2. If a bank refuses to pay the rate of interest that is being paid by the other banks of the county or the rate of interest that is designated by the county commissioners, would the county commissioners have the right to refuse to designate such bank as a county depository by virtue of such refusal?"

Section 4767, R. C. M. 1921, as amended by chapter 49 of the laws of 1929, provides that public funds in the possession of county treasurers must be deposited rateably among all such banks in the county qualifying therefor, substantially in proportion to the paid in capital and surplus of such bank willing to receive such deposits under the terms of the act, and that the board of county commissioners must designate the banks in which such deposits may be made and no deposits can be made in any bank not so designated by the board. The sums so deposited shall bear uniform interest at the rate of not more than two per centum per annum, payable quarter-annually.

Answering your questions, you are advised that the fixing of the rate of interest to be paid upon these deposits in the banks is a matter for the board of county commissioners to determine and not the banks. A bank must be willing to pay the interest fixed by the board so long as it does not exceed the maximum permitted by the statute as a condition precedent to being designated by the county board as a depository for funds in the hands of the county treasurer, and should any bank refuse to pay the rate of interest required by the board of county commissioners to be paid, the board should refuse to designate such bank as a county depository.

Under the statute all banks in the county receiving deposits of public funds must pay a uniform rate of interest so that the board cannot discriminate between banks as to the rate of interest charged. The board fixes a uniform rate of interest which must apply to all banks in the county who otherwise qualify under the act to become depositories, and so long as that rate of interest is the maximum, or less than the maxi-

mum permitted by law, any bank refusing to agree to pay the fixed rate of interest must not be designated by the board as a county depository because if it did so and deposits were made therein it would destroy the uniform rate of interest required to be charged all banks in the county receiving deposits of public funds.

Very truly yours,

L. A. FOOT,

Attorney General.