

Opinion No. 430**State Treasurer—State Depository Board—State Funds, Deposit of—Security Required of Depository of State Funds.**

HELD: State funds must be deposited in accordance with mandatory provisions of law, and the State Depository Board cannot accept Federal Insurance in lieu of the security required of a Depository by such mandatory law.

January 29, 1934.

Your communication to us of the 19th inst. is as follows: "Can the State Depository Board accept as security for State funds 'Federal Insurance as outlined in Banking Act of 1933,' copy of which is attached hereto? An early reply will be appreciated as many of the banks handling State deposits have this insurance, and request that we release present security equal to the \$2,500.00 insurance allowed. If it is possible to avail ourselves of this I feel it will be most advantageous to the State."

Section 14, Article XII, of the Constitution, provides:

"The governor, state auditor and state treasurer are hereby constituted a state depository board with full power and authority to designate depositories with which all funds in the hands of the state treasurer shall be deposited, and at such rate of interest as may be prescribed by law. When money shall have been deposited under direction of said depository board and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud or dishonorable conduct. * * *"

Section 1, Chapter 180, Laws of 1929, provides:

"It shall be the duty of the State Treasurer to deposit public moneys in his possession and under his control in solvent banks located in the State of Montana, except as otherwise provided by law, subject to national supervision or state examination, as designated by the State Depository

Board, and no other; provided, that all banks so designated shall undertake and agree, as a condition precedent to the deposit of any funds in such bank, that interest shall be paid upon the daily balances of all such deposits at a rate prescribed by the said board, which shall not be less than two and one-half per cent (2½%) per annum, payable quarterly, and all deposits shall be adequately and properly secured to the Treasurer as herein specified. No deposits shall be made of State funds by said Depository Board, nor by the State Treasurer under the direction of said Board, unless such bank shall first have delivered to the State Treasurer or trustee with some solvent bank, as hereinafter provided, as security thereof, bonds of the United States Government and its dependents, bonds of the United States Federal Land Banks, bonds and warrants of the State of Montana, and bonds of any city, town, or School District of the State of Montana, which are a general obligation of such county, city, town, or school district, in at least an amount equivalent to the amount of such deposit, or bonds of some good solvent surety company authorized to do business in the State of Montana, in at least the amount of such deposit, which bonds or security shall be first approved by the State Depository Board; provided, that the State Depository Board may require security in a greater amount than that above named; provided, that when negotiable securities are furnished, such securities may be placed in trust and the trustees receipt may be accepted in lieu of the actual securities when such receipt is in favor of the State Treasurer, his successors in office, and the State of Montana, and the form of receipt and the trustees have been approved by the State Examiner. No deposit of said funds shall be made or permitted to remain in any bank unless such bank shall have first been designated as a Depository by said Depository Board, nor until the security for the deposit shall have first been deposited with the State Treasurer, or placed with a trustee, as herein provided, and been approved by the State Depository Board. * * *"

It is well settled that state officers,

boards and commissions may exercise only such powers as are expressly given to them by constitutional provision or statutory enactment and such powers as are necessarily implied from those so given. They have no powers beyond those granted by express provision of law or necessary implication. Putting it in another way, they must administer the law as they find it. (State ex rel. Jones v. Erickson, 75 Mont. 429; 59 C. J. 111.)

In view of the mandatory language of the statute it is not necessary to discuss the insurance features of the National Banking Act of 1933.

Our law being as it is, we are constrained to answer the question propounded to us in the negative.