

No. 121

BANKS AND BANKING—FEDERAL DEPOSIT INSURANCE CORPORATION, depositories

Held: Amounts due various separate political units need not be carried in separate accounts at depository if identity is maintained on custodian's books to avail such funds of F. D. I. C. coverage.

May 23, 1941.

Mr. W. A. Brown
State Examiner
State Capitol
Helena, Montana

Attention: Mr. A. M. Johnson

Dear Mr. Brown:

You desire an opinion as to whether or not Federal Deposit Insurance Corporation coverage extends to each separate political subdivision where the funds of the several units are placed in one account in the depository if the amount due each political subdivision is reflected on the books of the treasurer.

Section 305.3, Rules and Regulations of the Federal Deposit Insurance Corporation, provides:

"Deposits of Public Officers. The owner of any portion of a deposit appearing on the records of a closed bank under the name of a public official, state, county, city, or other political subdivision will be recognized for all purposes of claim for insured deposits to the same extent as if his name and interest were disclosed on the records of the bank: Provided, That the interest of such owner in the deposit is disclosed on the records maintained by such public official, state, county, city or other political subdivision and, Provided further, That such records have been maintained in good faith and in the regular course of business. (Sec. 101 (m) (3), 49 Stat. 697; 12 U. S. C., Supt., 264 (m) (3)). (Res. July 1, 1938, as amended May 3, 1939)."

I am attaching hereto an excerpt from the hearing before the Committee on Banking and Currency, House of Representatives, on H. R. 5357, Banking Act of 1935, which also sheds light on the intent of Congress in this respect.

It appears the funds of each political subdivision are protected up to the amount of five thousand dollars, where the amount credited to such unit appears on the books of the Treasurer, and it is not necessary separate accounts be set up in the depository. This is true irrespective of the fact the same person may be the custodian of the different funds.

There is nothing in the case of *Casady v. First State Bank of Cheyenne, Okl.*, 24 F. Supp. 687, affirmed (C. C. A. 10) 106 Fed. (2nd) 784, which conflicts with the conclusion reached herein.

From an administrative point of view, it might be an extremely difficult, even impossible, task for a treasurer to reflect on his books the true amount credited to each political unit in cases where the pro rata deposits are required in more than one depository, as provided in Section 4767 of the Revised Codes of Montana, 1935.

Sincerely yours,

JOHN W. BONNER
Attorney General

"Congressman Wolcott: With respect to public money, where a county or municipality determines on a particular bank as a depository for its funds, that is usually kept in a lump-sum deposit?"

"Mr. Birdzell: Yes.

"Congressman Wolcott: However, on their own books, they carry it as grades, highways, sewers, contingent, and so forth. Would the municipality have this fund guaranteed as a lump sum, or would it be guaranteed according to the manner in which it was carried on the books?

"Mr. Birdzell: According to the manner they are owned. For instance, if a city carries its deposit in a bank, and it places its funds divided, we will say, for general fund purposes or for some specific purpose for which funds may be appropriated, so that it keeps its books separately, so that it can keep account of deposits withdrawn or deposited for particular purposes, nevertheless those are city funds and they must be combined for the purpose of insurance; but, on the other hand, school funds may be deposited by the same treasurer as deposits of city funds, and yet the schools, being a separate corporate entity, would separately own whatever funds were deposited and the school corporation could make a separate claim.

"Congressman Wolcott: Let us take, as an example, a county where they have a general fund, and then they have a drainage fund, and they have a highway fund and a school fund, and then a fund into which go the collections made by the County Treasurer for the benefit of the townships, where the County Treasurer acts on the matter of delinquent taxes as the agent of the township, your criterion is as to whether these funds are held to the credit of the distinct political subdivision and political entities of that county?

"Mr. Birdzell: Yes. It may be difficult in the case of your drainage funds that you speak of, or your—

"Congressman Wolcott: Irrigation districts?

"Mr. Birdzell: Irrigation district, or something of that sort, where that is a special assessment district and as such would be the proceeds of special assessments levied. The same may be true of your highways. In that case the drainage district or the highway district would be considered a separate political entity.

"Congressman Wolcott: Then in order to get the full advantage of this insurance, the municipal corporation or the State Legislature should provide that the school district and the drainage district or irrigation district, sidewalk district, or highway district should be considered to all intents and purposes a political entity of the county?

"Mr. Birdzell: It would depend on whether or not they are in fact so. If they are, they are getting the benefit of insurance now.

"Congressman Wolcott: The average county or municipality makes a separate levy for school purposes. They make a separate levy for highway purposes and for all of these different purposes, and carry them separately on their tax rolls. Do you think that under that system they should be entities to the extent that each of these funds would be insured up to \$5,000.00?

"Mr. Birdzell: It depends upon whether the proceeds of the city tax for school purposes belongs to the city, or whether they have a separate corporate organization. If it be a separate organization, and the tax was intended for that corporation, then that corporation would own the deposits.

"Congressman Wolcott: Of course, there is a great deal of overlapping there in their prerogatives, and the municipality or city or county always exercises a certain supervisory duty with respect to all of these other entities, and while specifically these funds belong to the district, at the same time they belong to the county and the county is made responsible for them.

"Mr. Birdzell: The county might be merely the agent for collecting the funds. That is true in many instances, and it might be that they would employ one common treasurer who would have the control of the deposits, but nevertheless the funds, when they go on deposit, are certainly going on deposit to the credit of the particular municipality that is authorized

to expend them. That being the case, they would belong to that municipality and that municipality would be getting the benefit of the insurance.

"Congressman Wolcott: The criterion seems to be whether any part of this fund which is deposited by the county or city treasurer is intended to have been deposited in connection with the credit which he gives that entity on his own books?

"Mr. Birdzell: Yes; that is correct. We have even gone to the extent in some cases of giving assurance that sinking funds actually belong under the peculiar law that they be rated under to the holders of the bonds rather than to the municipality. There is one instance that we have come across where the ownership of the sinking funds is so definitely fixed by the State law under which they are collected that it can be said definitely that they belong to the owners of the bonds rather than to the municipality. It is a question of ownership in the last analysis."