

**Retained by State Institutions,
Where Securities Should be Held**

Held: (1) The depositories of funds retained in the possession of state institutions under Section 79-603, Revised Codes of Montana, 1947, must pledge securities sufficient to adequately and properly secure the amounts deposited in said depositories.

(2) The actual securities may be deposited with the State Treasurer or with some solvent bank as trustee. If the securities are negotiable and are placed in trust with a bank, the trustees' receipts should be held by the State Treasurer. Whether the actual securities shall be placed with the State Treasurer or in a solvent bank as trustee is a detail which should be determined by the State Treasurer and the State Depository Board.

August 1, 1951.

Mr. A. M. Johnson
State Controller
State Capitol Building
Helena, Montana

Dear Mr. Johnson:

You have pointed out that pursuant to Section 5, Chapter 194, Laws of 1951, it is the duty of the State Controller to examine the books and accounts of the treasurer and secretary of various state institutions, including the University of Montana, and divisions thereof. You further point out that under this section the State Controller is to require all persons connected with the financial affairs of such institutions to adhere to such general methods and details as are required by law.

In connection with these duties you have asked me the following questions:

1. When various funds are held and controlled by the branches of the University of Montana should the depositories of these funds furnish securities for the deposits that exceed the amount covered by Federal Deposit Insurance?
2. If these funds are to be secured, who should have possession and control of the securities?

Opinion No. 30

**State Depository Board—Deposit of
State Funds—State Treasurer
—Security for Certain Moneys**

Sections 79-301, 79-306 and 79-603, Revised Codes of Montana, 1947, are applicable code sections to your question. Section 79-301 provides in part:

"(1) 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 . . .

(2) No deposits in excess of the amount guaranteed or insured according to law shall be made of state funds by said depository board, or 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 therefor, cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States Government and its dependents, bonds guaranteed by the United States Government or its dependents, bonds of the Federal Land Banks, bonds and warrants of the state of Montana, bonds and warrants of any county 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, or bonds of some good solvent surety company authorized to do business in the state of Montana, in at least the amount of such deposits in excess of the amount guaranteed or insured according to law, 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.

(3) 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 in excess of the amount of such deposit guaranteed or insured according to law shall have first been deposited with the state treasurer, or placed with a trustee, as herein provided, and has been approved by the state depository board. All interest paid and collected on deposits shall be by the state treasurer credited to the general fund of the state. The state depository board shall have the power of directing the withdrawal by the state treasurer of all moneys from any bank for any reason." (Emphasis supplied)

Section 79-306, Revised Codes of Montana, 1947, reads in part:

"(1) The state treasurer is hereby designated the treasurer of each and every state board, commission, bureau, department and state institution, now existing or hereafter to be created or established . . .

(2) All state boards, commissions, bureaus, departments and state institutions not located in the capitol shall deposit daily all moneys, credits, evidences of indebtedness and securities in banks located in the city or town in which such boards, commissions, bureaus, departments and state institutions are situated, provided there is a qualified bank in such city or town, to be designated by the state treasurer with the approval of the state depository board, or with the state treasurer.

Such banks shall furnish indemnifying bonds or pledge securities in amounts sufficient to cover all such deposits at all times, and such deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and such deposits shall draw interest as other state moneys. Indemnifying bonds and pledged securities shall be subject to the approval of the state depository board."

Section 79-603, Revised Codes of Montana, 1947, permits the State Board of Examiners to allow state institutions to retain in their possession certain moneys. This section reads:

"The state board of examiners may in its discretion, by resolution duly

adopted and entered upon the minutes of said board, permit any state institution to retain in its possession, under such conditions as the board may prescribe, incomes from dormitories conducted by state institutions, and moneys deposited in trust by students, members, inmates or other persons, which may be subject to refund to the depositors on demand or otherwise. The state board of examiners may cancel such permission and require the deposit of any or all such funds with the state treasurer at its pleasure; provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such funds and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in said depositories."

From these statutes it appears to be quite clear that public moneys of the State of Montana, in the possession of the State Treasurer or under his control, unless specifically excepted, must be secured as provided in Section 79-301, supra. Hence, the question resolves itself down to whether or not the moneys which the state institutions retain in their possession under Section 79-603, supra, are excepted from the general provisions calling for security.

By Section 2, Chapter 157, Laws of 1931, the legislature added the provisions in Section 79-603, supra, calling for the securities. You will note this amendment begins with the word "provided" and was added to the second sentence of the statute. It might be argued that because this amendment was added to this sentence, which requires that the funds be deposited with the State Treasurer when the institution is no longer permitted to retain the funds in its possession, that the securities are only necessary when the funds are in the hands of the State Treasurer and not when in the possession of the institution. However, it is my opinion that the proper interpretation is that all funds that may be retained by any state institution pursuant to 79-603 should be secured regardless of whether in possession of the institution or the State Treasurer. This interpretation is the most reasonable one and is in keeping with the general rule of 79-301, supra, that pub-

lic moneys should be backed by security when deposited. Also, I see no valid reason for calling for securities when the funds are in the hands of the State Treasurer and not when in possession of the institution. There is just as much reason for requiring securities in one case as in the other.

In answer to your second question I direct your attention to the underscored portion of Section 79-301, supra. You will note that the securities may be delivered to the State Treasurer, or trustee with some solvent bank. If trust receipts are used as provided in the second underscored portion of 79-301, such trust receipts should be held by the State Treasurer. The details of where the actual securities should be held should be worked out with the State Treasurer and the State Depository Board in accordance with the applicable law in Section 79-301, 79-306 and 79-603, supra.

It is my opinion that:

(1) The depositories of funds retained in the possession of state institutions under Section 79-603, Revised Codes of Montana, 1947, must pledge securities sufficient to adequately and properly secure the amounts deposited in said depositories.

(2) The actual securities may be deposited with the State Treasurer or with some solvent bank as trustee. If the securities are negotiable and are placed in trust with a bank, the trustee receipts should be held by the State Treasurer. Whether the actual securities shall be placed with the State Treasurer or in a solvent bank as trustee is a detail which should be determined by the State Treasurer and the State Depository Board.

Very truly yours,
ARNOLD H. OLSEN
Attorney General