Opinion No. 19

FUNDS; Substitution of securities for public deposits—PUBLIC FUNDS; Security, substitution of—Section 16-2618, Revised Codes of Montana, 1947—Chapter 66, Laws of 1961.

Held: Chapter 66, Laws of Montana, 1961, requires that EVERY acceptable security for public deposits, when substituted for the securities originally given, must have, together with the market value of the original securities for which no substitution is made, a market value of one hundred and ten dollars for every one hundred dollars of public deposits.

July 10, 1961

Mr. Albert Leuthold
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Leuthold:

You have directed my attention to Chapter 66, Laws of Montana, 1961. This act amended Section 16-2618, Revised Codes of Montana, 1947, by adding the following paragraph, to take effect July 1, 1961:

> "(8) Any bank pledging securities as provided in this act at any time it deems it advisable or desirable may substitute securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city or town at its next official meeting. Such security so substituted shall at the time of substitution have a market value sufficient together with the market value of the original securities for which no substitution is made to equal or exceed one hundred ten dollars ($110.00) for every one hundred dollars ($100.00) of public deposits. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the county, city or town and to the depository bank, a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository bank."

As it existed before amendment, Section 16-2618 provided that all banks acting as depositories for county, city or town funds pledge certain acceptable securities to the governmental unit making the deposit, thus protecting the public deposits in the event of the failure of the depository bank. Securities listed as acceptable are:

(1) bonds of some surety company authorized to do business in Montana;

(2) bonds guaranteed by such companies directly or indirectly;

(3) bonds and securities of the United States government and its dependents;

(4) bonds and warrants of the State of Montana or any county, city, town or school district of Montana;

(5) Federal land bank bonds;

(6) bonds of other states and of counties of other states;

(7) bonds of the Dominion of Canada and Canadian provinces and other Canadian bonds guaranteed by the Canadian government or provinces thereof;

(8) bonds issued in the United States of America which are quoted on the New York market, which shall be acceptable at not to exceed ninety per centum (90%) of such market quotation.

The first seven of the securities listed above can apparently be accepted at face value as securities for public deposits, i.e., a $1,000.00 public deposit may be secured by a Montana school district bond having a face value of $1,000.00. The eighth listed security, bonds issued in this country and quoted on the New York market, is acceptable at only 90% of its market value as a security for public deposits. Thus, a corporate bond, having a face value of $1,000.00, which is quoted on the New York market at $950.00 could be used to secure only $855.00 of public deposits.

Before amendment, no provision was made for substituting securities pledged for the security of public deposits. To effect a substitution of securities pledged for public deposits, it is presently necessary for a bank to obtain a written release from the treasurer of the public depositor and the written approval of the State Examiner. Contemporaneous with this release, the depository bank must pledge new securities which must also be approved by the governing board of the public depositor and the State Examiner. The time consumed in obtaining these approvals often works to the disadvantage of the banks when an opportunity to make an advantageous exchange of securities presents itself. Such opportunities have been lost because of the delay incurred in receiving the necessary approvals. The amendment under discussion was intended to ameliorate this inconvenience by allowing the banks to substitute pledged securities without the prior approval of the public depositor.

You have requested my opinion on the following question raised by this amendment:

Does the requirement of the amendment that the securities substituted have together with the market value of the original securities for which no substitution is made a market value of one hundred and ten dollars for every one hundred dollars of public deposits apply to every security listed as acceptable by Section 16-2618?

There are several considerations which seem to militate against answering this question in the affirmative. First is the high price which a bank would be required to pay for the privilege of substituting pledged securities if this construction of the amendment should be adopted. For example, should a bank having a public deposit of $100,000.00 secured by $100,000.00 of pledged securities desire to substitute only $10,000.00 of the pledged securities, it would require at least $20,000.00 of substituted securities in order "to equal or exceed one hundred ten dollars for every one hundred dollars of public deposits" when taken "together with the market value of the original securities for which no substitution is made." Thus, the total securities pledged would be increased from $100,000.00 to $110,000.00.

A second factor to be considered is that most securities pledged for the protection of public deposits are held in trust for the public depositor by large out-of-state banks or by the Federal Reserve Bank of Minneapolis. These trustees are in no position to know the amount of public funds on deposit in the depository bank at the time of the requested substitution. Since, in the example given above, the public depositor could increase its deposits to the amount of the value of the securities, viz., $110,000.00, it would seem that, upon a second substitution of pledged securities, the trustee bank would have to require that the securities substituted raise the value of the entire pledge an additional ten per cent, to $121,000.00. For every subsequent substitution, the ratio would continue to increase. Thus, it is conceivable that a bank might be required to pledge securities valued in excess of $200,000.00 to protect a public deposit of $100,000.00.

It is clear that an affirmative answer to your question would render the statute unworkable, since no depository of public funds would be willing to pay such a premium for the privilege of substituting securities pledged for the protection of public deposits. From this premise it is argued that the legislature did not intend to enact an unworkable statute; that the only workable interpretation of this statute is that the language requiring the market value of the substituted securities, together with that of the original securities for which no substitution is made, to equal one hundred and ten dollars for every one hundred dollars of public deposits should apply only to bonds quoted on the New York market, which are acceptable at only ninety per cent of their market price; and therefore the statute should be so construde.

This interpretation recommends itself because it is workable. By applying the amendment only to bonds quoted on the New York market, the security required for the protection of public deposits would not be decreased, thus protecting the public moneys, nor would it be increased, forcing the depository bank to pay an exorbitant premium for the privilege of substituting securities. It is, of course, the duty of this office to construe legislaitve enactments so as to make them workable, whenever that is possible. However, as our Supreme Court has stated,

in the case of Vaughn & Ragsdale Co. v. State Board of Equalization, 109 Mont. 52, 96 Pac. (2d) 420:

> "When the terms of a statute are plain, unambiguous, direct, and certain, the statute speaks for itself and there is nothing for the court to construe."

To the same effect, see State ex rel Valley County v. Bruce, 104 Mont. 500, 69 Pac. (2d) 97; Kipp v. Paul, 110 Mont. 513, 103 Pac. (2d) 675; In re Kesl's Estate, 117 Mont. 377, 161 Pac. (2d) 641; Sheridan County Electric Co-Op v. Montana Dakota Utilities Co., 128 Mont. 84, 270 Pac. (2d) 742.

The language in question reads as follows:

> "Such security so substituted shall at the time of substitution have a market value sufficient together with the market value of the original securities for which no substitution is made to equal or exceed one hundred ten dollars ($110.00) for every one hundred dollars ($100.00) of public deposits."

In my opinion this language plainly and without ambiguity applies to **all** acceptable securities. It is regrettable that this is not an acceptable solution to the problems of depository banks which this statute was designed to remedy. But "when the terms of a statute are unambiguous, the statute speaks for itself and there is nothing . . . to construe regardless of what might have been the legislative thought." In re Kesl's Estate, 117 Mont. 377, 161 Pac. (2d) 641.

The terms of Chapter 66, Laws of Montana, 1961, seem to clearly require that **every** acceptable security for public deposits, when substituted for the securities originally given, must have, together with the market value of the original securities for which no substitution is made, a market value of one hundred and ten dollars for every one hundred dollars of public deposits. I so hold.

However, it should be pointed out that the present practice of releasing pledged securities and pledging new securities, described supra, is not affected by anything in this opinion and may still be utilized.

Very truly yours,
FORREST H. ANDERSON
Attorney General