

SCHOOLS; Rolla School of Mines, handling of funds. ✓

June 1, 1933 ✓



Hon. A. A. Speer, Chairman
Executive Committee
Missouri School of Mines & Metallurgy
Curator University of Missouri
Jefferson City, Missouri

Dear Sir:

We wish to acknowledge your letter of May 29th, 1933, requesting an opinion from this department as follows:

"Under the law the Board of Curators of the University of Missouri is required to advertise for bids for a depository for the funds of the Missouri School of Mines and Metallurgy at Rolla, Phelps County, Missouri, for the ensuing year.

The law requires that bids shall be limited to banks within the county where the institution is located. There is, at this time, only one bank in Phelps County, the Rolla State Bank, and it is under restrictions.

We are advised that the Rolla State Bank will not make a personal bond for the use and custody of the funds of the institution as required by law.

In the event the Rolla State Bank should not submit a bid for funds, or, if it should refuse to secure the funds as required by law, or if the bank should fail to legally qualify in any other respect, what will be the alternative? Can the Curators legally select a depository in some other county or in St. Louis?

Trusting we may have your opinion, I am

Article 21 of Chapter 57, Revised Statutes of Missouri, 1929, provides for a school of mines and metallurgy at Rolla, and that same shall be as a distinct department of the University of the State of Missouri. Said article further provides for a treasurer for the Rolla School to handle its funds and divorce such funds from the State University's funds (Sections 8678-8682 inclusive) i.e. makes the provision for two separate and distinct funds.

Article 20 of Chapter 57, Revised Statutes of Missouri, 1929, establishes a State University and the government of such invested in a board of curators. Said article further provides the duties and powers of the board of curators.

Section 8666 R. S. Mo. 1929, provides for the establishing and creating in the treasury department of this State funds in which a "University" fund is included. This section further provides that when any moneys are paid into the state treasury that it shall be placed to the credit of the fund to which it belongs.

Section 8676 R. S. Mo. 1929, provides that it shall be the duty of the board of curators to receive bids for depositories for funds, that it has the use or custody of, on or before the first Monday of July of each odd numbered year. And provides for a notice that bids to be received shall be published in a newspaper twenty days before such meeting.

Section 8677-78 R. S. Mo. 1929, provide the methods for receiving the bids, and the selection of a depository.

Section 8679 R. S. Mo. 1929, provides that a bond shall be given within ten days by the depository after receiving notice of its selection; the amount of the bond; the qualifications of the sureties; and a further provision for a surety bond.

The above sections provide the manner in which the funds of the school of mines and metallurgy are to be handled. You will note that it is the duty of the board of curators to select a depository. The purpose and intent of the law being that funds of the school be safeguarded. The legislature intended that the looking after the funds of the school would be given the serious attention and caution of the Board of Curators, and the legislature prescribed a rigid procedure for the handling of such funds. It provided (1) that proposals should be received so that each bank in the city, town or county in which such institution was located would have an opportunity to bid for the funds, and interest would also be paid

to the funds by the banks for the privilege of having the funds deposited therein. (3) That the school money would be protected by a bond given by the banks receiving the funds.

You ask if the only bank in the county wherein Hollis school of mines is located refuses to submit a bid then what may the board of curators do towards securing some bank in another part of the state to handle such funds?

The statutes, supra, specifically limits depositories to the city, town or county in which such institution is located. However, if the banks in such county will not submit proposals for the funds then the board of curators may under section 8678 select a temporary depository. This provision reads as follows:

"If, for any reason, no selection of a depository is made at the time fixed by this article the board of managers by whatever name called may, at any subsequent time, after twenty days' notice, receive bids and select a depository or depositories in the manner herein provided, in which event the selection shall only be for such period of time as may intervene until the next regular period for the selection of such depository."

The statutes provide that a newspaper notice shall be given and that it is the duty of the Board of Curators to receive proposals from banks in the county in which the school is located for the funds. Thus if no proposals are received or submitted by the banks in the county in which such institution is located, and the statute is silent thereon, it would follow that the Board of Curators would have to make some arrangements for the handling of the funds and the place where same would best be protected would be the only logical place for their deposit. In other words, after the Board complied with the sections of the statutes, supra, and no banking institution in that county met the requirements of said sections, then the Board of Curators would have the right to select a depository in some other county that would meet such requirements. However, before the selection of a depository in another county, twenty days notice must be given and proposals received in the same manner as provided for the receiving of bids in the first instance from banks located in counties in which such institution is located.

June 1, 1933

The Board of Curators must follow the statutes, but if it is impossible then they have the right to use reasonable discretion.

In the case of State ex Rel. Thompson, State Treasurer, v. Board of Regents for North-East Missouri State Teachers' College, 264 S. W. 688 I.C. 700, the Supreme Court in Banc, in writing its opinion held the following:

"While in a sense the board is an agent of the state with defined powers, the importance of its duties with their attendant responsibilities, is such as to necessarily clothe the board with a reasonable discretion in the exercise of same. This is inevitably true, first, because of the difficulty in framing a statute with such a regard for particulars as to cover every exigency that may arise in the future; and, second, because a restriction of the board's powers to the letter of the law would destroy its efficiency, and to that extent cripple the purpose for which the institution was created." " " " "

From the above and foregoing it is the opinion of this department that the board of curators may select a depository in some other county or in St. Louis City, if after complying with the terms of the statutes, hereinbefore set out, they fail to receive proposals or reject all proposals from banks located in such city, town or county where such institution is located. And that in the selection of a depository in some other county or in the City of St. Louis the board shall follow the same procedure and require a bond that complies with the statute.

Yours very truly,

JAMES E. HORNBOUSTEL,
Assistant Attorney General.

APPROVED _____
Attorney General.

J.H:MM