COUNTIES:
DEPOSITARIES:
COUNTY COURTS:
COUNTY DEPOSITARIES:

Counties, cities, and other political subdivisions specified in Section 110.010, RSMo, are authorized to invest their funds in time deposits, including certificates of deposit. Advertisement for bids is not required.

OPINION NO. 164

July 23, 1975

FILED
164

Honorable George W. Lehr
State Auditor
State Auditor's Office
State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Lehr:

This opinion is in response to the question you have posed as follows:

> "May counties, cities, and other political subdivisions, invest funds in time deposits, including certificates of deposit, pursuant to Chapter 110, RSMo?"

It has been the view of this office, as originally expressed in Opinion No. 177, December 20, 1963, to Robert B. Mackey, that counties, and others found within the provisions of Chapter 110, RSMo -- DEPOSITARIES FOR PUBLIC FUNDS, were authorized to invest their funds in "time deposit-open account" but not in certificates of deposit. We take the opportunity of this opinion request to reevaluate that particular holding.

Some discussion of the background of Chapter 110 may be of value.

Prior to the enactment of what is now (with changes) contained in Chapter 110, RSMo, there was no authority for the county treasurer to deposit county funds in a bank. The result was that some county treasurers would make secret agreements with banks whereby both profited from the use of county funds. The County Depositary Law was enacted in 1889 to remedy this situation, to regulate the deposit of such public funds in banking institutions with the primary purpose of obtaining for the county the maximum yield upon the money so deposited under safeguards to assure both the safety of the funds and freedom from favoritism.

In Denny v. Jefferson County, 199 S.W. 250, 255 (Mo. 1917), the Supreme Court stated:

> "It goes without saying that the purpose of this law is to obtain for the public the largest available income from its funds. Their safety in the hands of the depositary is required to be safeguarded by ample security in addition to the responsibility of the bank, . . ."

And in State ex rel. Bank of Crane v. Hawkins, 109 S.W. 77, 79 (St. L.Ct.App. 1908), the court ruled:

> ". . . the county depositary act should be so interpreted as to effectuate the purposes the Legislature had in view when enacting it; that is, that the county should receive the benefit of the highest rate of interest obtainable on the county funds, at a minimum risk of losing said funds, or any part thereof. . . ."

The foregoing cases thus make clear the legislative purpose in enacting the County Depositary Law. This law constitutes the consent of the state to the creation of the particular kind of creditor-debtor relationship contemplated by general banking practices resulting from a general deposit of funds, with safeguards to assure the safe return of the funds, and with the county sharing, through bonus or interest on such funds, in the benefits resulting to the bank from such deposit.

It may well be that at the time the County Depositary Law was enacted, the legislature contemplated that the deposits made would be demand, as distinguished from time, deposits. For one thing, the amount of interest was not then limited by statute or regulation, and the interest to be paid was a matter of bargain between the parties. Since the bank would have a general idea of the amount the county would have on deposit at any particular time, and since the bank would also have a fair idea of the time or times it would be called upon to pay out moneys deposited by the county, it could determine within reason what rate of interest it should bid to be paid on the funds under the circumstances. There would be no occasion for the county to contract for a time deposit.

The instant problem arises because of restrictions and limitations upon the payment of interest imposed by federal law and regulations, none of which were remotely contemplated at the time the

County Depositary Law was enacted. Hence, whether or not the legislature contemplated that any of the county deposits would be placed on time deposit, the real question is whether the law, fairly construed in the light of its basic purpose (to obtain a return on county funds), specifically or by necessary implication prohibits time deposits generally or any type thereof.

Referring to the statute itself (Sections 110.130 to 110.260, inclusive, RSMo), we note that only once is the noun "deposit" used therein. There are several references to the act of depositing county funds, that is, phrases such as "shall deposit" and "may deposit," but nowhere is there any specific reference to the character of the deposit.

A deposit, as such term is used in the statute, is obviously a transaction peculiar to the banking business. Hence, the statute must necessarily be construed in the light of the practices used in such business but subject to the common understanding of the terms used. As generally understood, the word "deposit" includes both demand and time deposits. Thus, in the work by Newmark, "The Law Relating to Bank Deposits," which was published in 1888 and may be deemed contemporary, it is said in Section 7, at page 7:

> "In short, the term deposit became a symbolical word to designate . . . all that class of contracts where money . . . was placed in the hands of banks or bankers, to be returned in other money on call or at a specified period, and with or without interest." (Emphasis added)

Section 362.010, RSMo, of our banking statute, defines both "demand deposits" and "time deposits." As used in the banking statute, the term "demand deposits" is defined as meaning "deposits, payment of which can legally be required within thirty days." The term "time deposits" is defined as meaning "all deposits, the payment of which cannot legally be required within thirty days." Identical definitions of the terms "demand deposits" and "time deposits" are contained in Section 363.010, RSMo. Hence, the sole distinction made in the banking statutes between "demand deposits" and "time deposits" is that the payment of demand deposits can be legally required within thirty days, whereas time deposits cannot be required within such period.

The definition of these terms in Parts 217 and 329 (Sections 217.1 and 329.1) of Title 12 of the Code of Federal Regulations, although differently worded and in greater detail than the Missouri statute, makes the same basic differentiation between demand and

time deposits, namely, that the payment of time deposits may never be required in less than thirty days of the date of deposit, and a demand deposit is every deposit other than a time deposit (or a savings deposit).

Bearing in mind, therefore, that both demand and time deposits are in fact deposits in banking law and practice and common understanding, we have carefully examined the language of the County Depositary Law and find neither any express language prohibiting time deposits nor language which necessarily precludes the use of time deposits under any and every circumstance. As herein noted, the basic purpose of the law was to assure, to the extent possible, that the county would receive a return in the form of interest on its funds to the maximum amount consistent with the safety of such funds. All other provisions of the law are subsidiary to this basic purpose. In the light thereof, we can perceive no legislative intent to prohibit the county court from placing some of the funds in time deposits when such can be done without detriment to the county and thereby obtain interest upon such funds which could not legally be paid upon demand deposits.

Section 217.1 of Title 12, Code of Federal Regulations, includes definitions of the following:

> "(a) Demand deposits. The term 'any deposit which is payable on demand', hereinafter referred to as a 'demand deposit', includes every deposit which is not a 'time deposit' or 'savings deposit', as defined in this section.
>
> "(b) Time deposits. The term 'time deposits' means 'time certificates of deposit' and 'time deposits, open account', as defined in this section."

As mentioned previously, the use of the term "deposits" within banking practice includes "demand deposits" and "time deposits." It is equally clear that the term "time deposits" includes "time deposits, open account" and "time certificates of deposit."

Furthermore, it is our view that the investment of public funds, pursuant to Chapter 110, RSMo, does not constitute the loaning of public funds which is prohibited by Article VI, Section 25, Missouri Constitution. State ex rel. Graham v. City of Olympia, 497 P.2d 924 (Wash.Banc 1972); Valley National Bank of Phoenix v. First National Bank of Holbrook, 320 P.2d 689 (Ariz. 1958).

Therefore, it is our view that counties, cities, and other political subdivisions are authorized to invest their funds in time deposits, including certificates of deposit, pursuant to Chapter 110, RSMo.

A further question ancillary to the foregoing is whether advertisement for bids is presently necessary. In 1937, the year federal laws prohibiting payment of interest upon demand deposits became effective as to deposits of county funds, Section 110.030, RSMo, was enacted. In mandatory language, this section expressly provides that:

> "The various statutory provisions in relation to the advertisement for and receipt of bids and the award of the funds to the best bidder . . . shall be applicable only if and when, . . . it shall be lawful for banking institutions to pay interest on demand deposits, . . ." (Emphasis added)

Under federal regulations (and Section 362.385, RSMo), it is unlawful for banks to pay interest upon demand deposits. In this situation, Section 110.030 expressly governs, and by its terms, suspends all statutory provisions for advertisement for bids and lettings to the highest bidder. We find no provision in this section which limits the suspension of the various statutory provisions as to advertisement for bids for demand deposits, or which require such statutory provision to be followed for that portion of deposits which may be placed upon time deposits. To hold that there is such a requirement in the face of the all-inclusive language of the statute would be to exercise legislative functions and rewrite Section 110.030.

No doubt, the legislature realized that in most counties, either all or the greater percentage of the county funds, in the exercise of the sound judgment of the county court, must necessarily be placed on demand deposit, and that only a relatively small portion of the total amount could properly be placed on time deposit. Whether this is so or not, in view of the language of the statute making the requirements as to advertisements and bids applicable "only if and when" interest may lawfully be paid upon demand deposits, such requirement is presently not applicable. However, all other provisions of the County Depositary Law and related statutes, including the requirements of Sections 110.010 and 110.020, RSMo, relating to the deposit of securities by the county depositaries, are still applicable and must be followed.

CONCLUSION

It is the opinion of this office that counties, cities, and other political subdivisions specified in Section 110.010, RSMo, are authorized to invest their funds in time deposits, including certificates of deposit. Advertisement for bids is not required.

Yours very truly,

JOHN C. DANFORTH
Attorney General