

**OPINION
64-213**

May 11, 1964 (OPINION)

SCHOOL DISTRICTS

RE: Funds - Deposit of

This is in reply to your letter of May 5, 1964, relative to the interest and sinking funds, building funds and the special reserve funds of the various school districts that are kept in the Bank of North Dakota. The county treasurer is the custodian of the accounts.

In your letter you quote from a letter of the county treasurer which states:

Recently I was asked by the Clerk of a School District to have their Building Fund money transferred to their local Bank within this County. If this is done the new depository will have to put up Bonds for security, necessitating our watching that these are kept up all the time which we do not have to do with the Bank of North Dakota.

If the above transfer is made and other Districts should want their Custodian Accounts transferred to their local Banks we could end up with various Custodian Accounts in several different Banks. We would then have to watch the securities from these different Banks as well as having several accounts with several different Banks to keep.

Does the law allow these several accounts to be scattered in different Banks or are they to be kept together by the Custodian in one Bank? Who has the final say on this? Is the decision to be made by the County Treasurer, the County Commissioners, or are the different Districts permitted to choose their Bank and we to abide by same? Who has the final say?"

With regard to the special reserve fund of the various school districts, we note that section 57-19-02 of the North Dakota Century Code provides:

Such special reserve fund shall be deposited with the county treasurer of the county in which the school district, or the greater parts of its territory, is situated, for the use and benefit of the school district, to be drawn upon as provided in this chapter, and kept by such county treasurer as a separate trust fund. Moneys in such fund may be deposited, held, or invested in the same manner as sinking fund of the district or in the purchase of shares or securities of federal savings and loan associations or state chartered building and loan associations, within the limits of federal insurance."
(Emphasis supplied).

With regard to the school building fund, section 57-15-17(1) of the North Dakota Century Code, as amended, provides in part:

1. All revenue accruing from appropriations or tax levies for a school building fund together with such amounts as may be realized for building purposes from all other sources, shall be placed in a separate fund known as the school building fund, and shall be deposited, held, or invested in the same manner as the sinking funds of such school district or in the purchase of shares or securities of federal savings and loan associations or state chartered building and loan associations within the limits of federal insurance.* * * *." (Emphasis supplied).

It will be noted from the above quoted statutes that the special reserve fund and the building fund of a school district are to be deposited in the same manner as the school district sinking funds. With regard to school district sinking funds, section 21-03-40 of the North Dakota Century Code provides:

SINKING FUNDS - CUSTODIAN. The county treasurer shall be custodian of each sinking fund for the payment of bonds issued by each taxing district within the county except in case of any city, school district, or park district having a population of more than four thousand. In the case of any municipality having a population of more than four thousand, the treasurer thereof shall be custodian of each of its sinking funds."

We presume none of the school districts in question have a population in excess of four thousand and therefore the county treasurer is properly the custodian of these funds. Section 21-03-41 of the North Dakota Century Code provides:

SINKING FUNDS - DUTY OF COUNTY TREASURER. When the county treasurer is custodian of any sinking fund, he shall not remit to the treasurer of the taxing district any taxes levied for the purpose of paying the interest on or retiring the principal of bonds issued, but he shall retain the same in a separate fund maintained as a sinking and interest fund for the bonds of such taxing district. The county treasurer shall make quarterly reports to the treasurer of the taxing district whose sinking fund he has in his possession, showing all collections added to each such fund, all payments made from such fund, and the net balance in each such fund from time to time. The county treasurer shall keep the sinking funds of each taxing district on deposit in such public depository as may have furnished proper bond therefor and as may have been designated by the governing board of the taxing district. When a sinking fund is so deposited, the county treasurer shall be relieved of personal responsibility for its safekeeping." (Emphasis supplied).

It is apparent from the use of the words "such public depository as * * * * may have been designated by the governing board of the taxing district" as used in the above statute that the school board would have the right to select the public depository in which the sinking fund and, the right to select the public depository in which the sinking fund and, thus, the special reserve fund and the building fund of the school district are to be deposited.

We would also note that public depositories are to be selected and qualified by the school board in accordance with chapter 21-04 of the North Dakota Century Code, as amended. The board may select more than one depository in accordance with the provisions of such chapter.

We realize, as indicated in the quoted portion of the letter from the county treasurer, that permitting the local taxing district to designate the public depository for these funds may create additional burdens for the county treasurer. However the law in this regard is clear and we cannot alter it. The county treasurer should not, of course, deposit the funds in any bank other than the Bank of North Dakota unless the bank has been designated a public depository of the district in accordance with the provisions of chapter 21-04 and has furnished the proper bonds or securities as therein provided.

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