

OPINION
63-20

September 24, 1963 (OPINION)

BANK OF NORTH DAKOTA

RE: Demand Deposits

This is in response to your letter in which you call our attention to certain provisions of chapter 21-04 and then ask for an opinion whether or not the provisions of section 21-04-18 of the North Dakota Century Code applied to the Bank of North Dakota on demand deposits made with it.

Section 21-04-03, in substance, provides that public moneys shall be deposited in the Bank of North Dakota or in banks which have been duly designated as depositories in the manner prescribed by chapter 21-04.

Section 21-04-05, in substance, provides that any state or national bank, or the Bank of North Dakota, may be designated as a depository of public funds in accordance with the provisions of chapter 21-04.

Section 21-04-13 sets forth the procedure to be followed by the governing board of a public corporation and the time when such governing board may designate a bank as a depository. Among some of the provisions set forth in this section, it is provided that the governing body must give notice to every bank in the county of its intention to designate a depository. Said notice recites that the interest rate shall not exceed two percent on call deposits and shall not exceed four percent on time deposits.

Section 21-04-18 of the North Dakota Century Code provides as follows:

INTEREST RATES. The rate of interest on all public funds deposited as provided in this chapter shall not exceed two percent on daily balances subject to check or draft, credited monthly, and shall not exceed four percent on time deposits. Depositories of public funds in this state shall pay substantially the same rate of interest thereon as such banks pay to individual depositories upon individual deposits."

The history of this section indicates that it was created by chapter 199 of the 1923 Session Laws, which at that time provided that the rate of interest on all public funds deposited herein provided shall not be less than two percent or more than three percent on daily balances subject to check or draft credited monthly and not less than four percent or over six percent on time deposits.

In 1927, by chapter 227, the Legislature left the language the same but changed the rate of interest to be not less than one and one-half percent or over three percent on daily balances subject to check or draft* * *and not less than three and one-half percent or over five

percent on time deposits.

In 1931, the Legislature, by chapter 222 amended this law and eliminated the minimum rate and provided for a limitation on the maximum rate. The present law is still the same as amended in 1931 and merely provides for a limitation on the maximum but no limitation on the minimum rate.

Section 21-04-13 pertaining to the notices to be given refers to the types of deposits as call deposits or call funds subject to check and draft, and time deposits. It is observed that the classification under said section is the same as found in section 21-04-18. It becomes eminently clear in reviewing the various provisions of chapter 21-04 that section 21-04-18 applies to all depositories whether it is the Bank of North Dakota, or a state or national bank. This section begins with the language: "* * *The rate of interest on all public funds deposited as provided in this chapter* * *." (Emphasis supplied).

The Industrial Commission is charged with the duty to operate, manage and control the Bank of North Dakota. As such, it is also authorized to prescribe certain rates of interest, etc. Section 6-09-12 of the North Dakota Century Code provides, as is material here, as follows:

* * *The industrial commission, unless otherwise limited by law from time to time shall fix the rates of interest allowed and received in transaction of the bank* * *." (Emphasis supplied).

The underscored language does not give the Industrial Commission plenary authority to set the rates of interest. The Industrial Commission is subject to limitations set forth by law. Section 24-04-18 sets forth limitations on certain classes of deposits.

It is, therefore, our opinion that the Bank of North Dakota is governed by the provisions of section 21-04-18 in the same manner as other state or national banks are governed by said provisions.

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