

OPINION
78-49

February 22, 1978 (OPINION)

Mr. Robert W. Kinsey
State's Attorney
Divide County
Crosby, ND 58730

Dear Mr. Kinsey:

This is in reply to your letter of February 15, 1978, relative to Chapter 21-03 of the N.D.C.C. You state the following facts and questions:

I have been asked to seek a determination from your office relative to the requirements which a political subdivision must make of a national bank when the subdivision deposits funds in the bank.

The Federal Deposit Insurance Company has raised the amount of insurance for political subdivisions to \$100,000. Specifically, my questions are these:

1. If a political subdivision deposits less than \$100,000 in a national bank covered by Federal Deposit Insurance, need the political subdivision require any bond or pledge of assets from the bank?

2. If a political subdivision deposits more than \$100,000 in a national bank which is covered by the Federal Deposit Insurance, need the political subdivision demand of the bank a bond or pledge only for the amount in excess of the Federal Deposit Insurance, or must it demand a bond or pledge for the entire amount on deposit?

Naturally, I recognize that if a pledge is required instead of a bond, that the amount of the pledge must be \$110 for every \$100.

Basically, I am asking you for your interpretations of sections 21-04-08, 21-04-09, 21-04-16 and 21-04-17 of the North Dakota Century Code.

Section 21-04-08 of the N.D.C.C. provides in part as follows:

Except as I otherwise provided in sections 21-04-16 and 21-04-17, and before any deposit shall be made in any depository other than the Bank of North Dakota, by or in behalf of any public corporation, such depository shall furnish a bond payable to the public corporation making such deposit in an amount that at least shall equal the largest deposit that at any time may be made in such depository. * * *

Section 21-04-09 of the N.D.C.C. provides in part:

The board of any public corporation may accept from any banking corporation, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, such board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. * * *

Section 21-04-16 of the N.D.C.C. provides:

WHEN NO BONDS ARE REQUIRED. Whenever it shall appear that a bank designated by a public corporation as depository of its fund has complied with the provisions of the act of Congress relating to the guaranty of deposits in state and national banks, no bond shall be required of said bank to secure the deposits of any part of said public funds up to the amount the deposit is secured in said bank under said federal act.

Section 21-04-08 requires, "except as otherwise required in sections 21-04-16 and 21-04-17," a surety bond or pledge of assets. Section 21-04-16 is thus an exception to the requirement in Section 21-04-08. Section 21-04-16 provides that no bond is required when the bank is insured by Federal Deposit Insurance "up to the amount the deposit is secured in said bank under said Federal act." We take this to mean that if the insurance provided by Federal Deposit Insurance Corporation is \$100,000.00 for political subdivisions that an official depository need not post any bond up to that amount. If, however, the amount which may be deposited by a political subdivision in such bank exceeds the \$100,000.00 insurance, a bond or pledge of assets would be required for the amount in excess of \$100,000.00.

Section 21-04-17 provides that if the Federal insurance is withdrawn from an official deposit of a political subdivision must immediately withdraw the full amount of its deposits from the bank or forthwith require the usual bond.

With regard to your specific questions, Section 21-04-08 requires a bond, except as provided in Section 21-04-16, "in an amount that at least shall equal the largest deposit that at any time may be in such depository." If the largest amount that at any time may be in such depository exceeds the amount of Federal insurance, the bank must post a bond or give a pledge of securities for the amount that may be in excess of that insurance. Thus, if the insurance is \$100,000.00 and the largest amount that may be in the bank is \$150,000.00, the bank would be required to post a bond or pledge assets to cover the amount in excess of insurance, i.e., \$50,000.00 even though at the time the actual amount in the bank may be less than \$100,000.00. Thus, it is not the amount which is actually on deposit which governs but rather the largest deposit that at any time may be in such depository bank which would control.

If a political subdivision were to name a bank as a depository for an amount not to exceed \$100,000.00 and if the bank were insured by Federal insurance for that amount, no additional bond or pledge would be needed. On the other hand, if the political subdivision specifies a bank as a depository for any moneys which the political subdivision may receive and if that amount may be, at any one time, in excess of

the insurance, the bank would have to post a bond or pledge securities for the amount in excess of the Federal insurance. The bond or pledge must be made before any moneys are deposited pursuant to Section 21-04-08.

In direct response to your questions:

1. Yes, the political subdivision must require a bond or pledge of assets from the bank if the largest amount that at any time may be made in such depository exceeds the Federal insurance even though the amount actually deposited at the time the bank is named an official depository is less than the insurance.

2. The political subdivision need only require a bond or pledge of assets for the amount the largest deposit may exceed the Federal insurance; it need not require a bond or pledge of assets for the amount covered by the Federal insurance.

I trust this will adequately set forth our position on the questions presented.

Sincerely,

ALLEN I. OLSON

Attorney General