

**OPINION
60-124**

March 30, 1960(OPINION)

GOVERNMENTAL FINANCE

RE: Depositories of Public Funds - Time of Designation

Re: Chapter 21-04 - Depositories of Public Funds

This is in reply to your letter in which you state that Williams County is confronted with the problem relating to the time when the County Commissioners may designate depositories of public funds. The question is whether or not the commissioners may designate depositories only during the regular meeting in January of each even numbered year or at some other time.

The main question is with reference to the construction of Section 21-0413 of the 1943 Code. The first portion of this section provides that the governing board at its regular meeting in January of each even numbered year shall assemble and examine all outstanding bonds and require new bonds when necessary in order to comply with the provisions of this chapter.

It then further provides that if no regular meeting of such board is required by any other law, the board shall assemble for said purpose not later than the third Tuesday in January. This portion of the statute imposes a direct duty upon the governing body to assemble and examine all outstanding bonds and require new bonds whenever necessary to comply with the provisions of chapter 21-04. It imposes upon the board an affirmative duty to do this at least every January of each even numbered year. The same section now also provides:

At such meeting, the board shall designate depositories of public funds as herein provided. . . ."

This Act was originally enacted by the 1923 Legislature. At that time the Act required the meeting in July. The language just quoted above, "at such meeting the board shall designate" at that time read, "at its first regular meeting in July after this Act takes effect the board shall designate depositories of public funds as herein provided."

In 1927 the Legislature amended this section and provided that the board meet, and so forth, during the month of January, similarly as now provided for in Section 21-0413. At the same time the Legislature provided that:

At its regular meeting in January after this Act takes effect, the Board shall designate depositories of public funds as herein provided. . . ."

This requirement had a specific meaning and purpose at that time. This language and provision was necessary to a certain extent to compel the governing bodies to designate depositories, and so forth, after the effective date of the Act. This supports the thinking that the first portion of the section in question imposes an affirmative duty an obligation on the governing bodies. In other words, it designates a time when such action must be considered. It does not limit the action relating to depositories to that particular time.

In the present Code we now find the language reading as follows:

. . . . At such meeting, the board shall designate depositories of public funds as herein provide. . . ."

The term, "at such meeting" apparently is the result of the recodification of the Code for I am unable to find any amendment which places this language in the section as it is now found. The recodifier's notes merely state that the section was revised for clarification and brevity, but makes no explanation why the language "at such meeting" appeared in lieu of the following, "at its first regular meeting in July after this Act takes effect" and "at its regular meeting in January after this Act takes effect."

The language and provisions of the law "at its (first) regular meeting in January (July) after this Act takes effect the board shall designate depositories of public funds as herein provided" actually outlived its usefulness and purpose after the first regular meeting in July or January as the case was. The term "at such meeting" as now found in the section must also refer to any meeting held for said purpose.

This becomes eminent when we examine the other provisions of Section 21-0413, which provide that:

The clerk of such board, at least ten days before such meeting, shall notify every bank in the county, both state and national, that the next regular meeting, or if no meeting is required by law to be held in January of each even numbered year, then at a meeting to be called for that purpose the board will designate a depository or depositories of public funds. . . ."

(Underscoring ours)

It then goes on to provide what must be contained in the notice and how the notice must be given, and so forth. The underlined portion above strongly indicates that the governing body is not limited to the regular meeting in January in designating depositories. The term "at such meeting" also refers to the meeting called for said purpose as permitted under the underscored language above.

From reviewing the history of this section we cannot conclude that the section provides that the designation of depositories can only be made at the regular meeting in January of an even numbered year. We believe that the provisions relating to January of an even

numbered year is a mandatory provision requiring the governing boards to hold a meeting on this topic to review and examine outstanding bonds, and so forth, at least every January of each even numbered year. We cannot say that the Legislature limited a designation of depositories to only such time.

It is therefore our opinion that the governing board, or in this instance the County Commissioners, may designate a depository for public funds at any time after giving the required notice (ten days notice) and after having complied with the other provisions relating to receiving of proposals, and so forth, as provided for under Chapter 21-04.

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