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OFFICE OF THE ATTORNEY GENERAL OF TEXAS

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Gerald C. Mann  
Attorney General

April 8, 1939

Hon. W. N. Darst  
County Auditor  
Fort Bend County  
Richmond, Texas

Dear Sir:

Opinion No. 0-559  
Re: What disposition should be  
made of interest payment by  
bankrupt county depository?

Your request for an opinion on the above stated question has been received by this office.

Your letter reads in part as follows:

"In 1923 Davis & Company had been selected by the County as depository for the various funds and had on deposit to the credit of several funds certain amounts when that institution suspended payments, and in August following the partnership and individual members thereof were declared bankrupts, since which time until recently the estates have been in process of administration in that court.

"Davis & Company gave the usual depository bond, providing for the payment of 6% interest on deposits which bond was executed by a number of sureties. The officers of the County filed claims with the Bankruptcy Court in a large amount, and collected from the sureties a portion of their deposits, but not all. With the payments by the sureties and payments through the Bankruptcy Court, the principal of the claims, together with interest to date of adjudication, was paid. Recently the Bankruptcy Court made a considerable payment on the interest on the claims accumulated since adjudication. The correct disposition of this payment of interest is the matter upon which your opinion is desired."

Title 44 of the Revised Civil Statutes 1911, Article 2440 to 2453, inclusive, contains general provisions with reference to county depositories. The above mentioned statutes were in full force and effect at the time of the selection of the depository of the funds of Fort Bend County in 1923, and would control and govern the disposition of interest collected on such funds.

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Article 2442, Revised Civil Statutes, 1911, reads as follows:

"It shall be the duty of the commissioners' court at ten o'clock A. M., on the first day of each term, at which, by article 2440, bids are required to be received, to publicly open such bids and cause each bid to be entered upon the minutes of the court, and to select as the depository of all the funds of the county the banking corporation, association, or individual banker, offering to pay the largest rate of interest per annum for said funds; provided, the commissioners' court may reject any and all bids. The interest upon such county funds shall be computed upon the daily balances to the credit of such county with such depository, and shall be payable to the county treasurer monthly, and shall be placed to the credit of the jury fund or to such funds as the commissioners' court may direct. When selection of a depository has been made, the checks of bidders whose bids have been rejected shall be immediately returned. The check of the bidder whose bid is accepted shall be returned when his bond is filed and approved by the commissioners' court, and not until such bond is filed and approved."

The fact that the depository was declared bankrupt would not affect the disposition of interest on the funds of the county when collected and paid to the county,

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has the right and authority to determine the disposition of interest payments on county funds by a bankrupt county depository as provided by law for the disposition of such interest on these funds at the time the selection of the depository was made.

You are further advised that the law in force and effect at the time the selection of the depository in question was made provides that such interest should be placed to the credit of the jury fund or to such funds as the Commissioners' Court may direct.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (Signed Ardell Williams  
Ardell Williams  
Assistant

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APPROVED:

(Signed) Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS