



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable J. R. (Bill) Hall
County Attorney
Lamb County
Littlefield, Texas

Dear Sir:

Opinion No. O-3592

Re: Is the First National Bank of Littlefield, the county depository, selected by the commissioners' court, legally responsible for the \$100,000 placed in the Olton State Bank, Olton, after the same has been placed in the selected county depository and checked out? - and other related questions.

Your letter of May 21, 1941, requesting an opinion of this Department on the questions stated herein, has been received.

We quote from your letter as follows:

"I have been requested by the commissioners' court of Lamb County, Texas, and by the First National Bank of Littlefield, Texas, the Lamb County Depository, to submit for your opinion the following question, to-wit:

"There was a Bond Issue voted in Lamb County, Texas, in the total sum of Three Hundred Thousand Dollars, the proceedings of the election and the bonds were approved by the Attorney General's Office of the State of Texas, the bonds were sold, and the Three Hundred Thousand Dollars sent to the County Depository of Lamb County, Texas, which is as stated above the

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First National Bank of Littlefield, Texas, and thereafter the Commissioners' Court of Lamb County, Texas, through the Treasury of Lamb County, Texas, checked the sum of One Hundred Thousand Dollars out of the County Depository, of Lamb County, Texas, and placed the same in the Olton State Bank of Olton, Texas. The question is, is the First National Bank of Littlefield, Texas, the County Depository, selected by the Commissioners' Court of Lamb County, responsible, legally, for the One Hundred Thousand Dollars, placed in the Olton State Bank, Olton, Texas, after the same has been placed in the selected County Depository, and can the Commissioners' Court legally place this money in another bank, not the duly selected County Depository, by accepting a bond approved by the Commissioners' Court from the Olton State Bank, Olton, Texas, and if it is possible for the money to be placed in the said Olton State Bank, should the First National Bank of Littlefield, Texas, the County Depository approve the bond or should the Commissioners' court of Lamb County, Texas, approve the bond of the Olton State Bank, if same can be given.

I have consulted the R. C. S. Vernons Annotated from Art. 2544, Vol. 8, Chapter Two, pertaining to County Depositories, and Texas Jurisprudence pertaining to County Depositories, and the said decisions given there under, and I have checked the decisions in the Southwestern Reporter, and it is the opinion of this said office that the money belonging to the County must be placed in the selected County Depository, and the Commissioners' Court has no right, legally to place the one hundred thousand dollars in any place except the selected county depository. And it is further the opinion of this office after the one hundred thousand dollars is checked out of the county depository, the county depository is not responsible any further for the same, and that any bond given for the safe keeping of the money after the same was checked out of the County Depository, by check from the said Lamb County Treasury, by orders of the Commissioners' Court, would be approved by the Commissioners' Court of Lamb County, Texas."

The procedure for the selection of county depositories is prescribed by Vernon's Annotated Civil Statutes, namely

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Articles 2544-2558. Within fifteen days after the selection of a county depository, it shall be the duty of the banking corporation, association or individual banker so selected, to qualify as county depository in one or more of the ways prescribed by Article 2447, Vernon's Annotated Civil Statutes, and Senate Bill No. 212, Acts of the 47th Legislature. Article 2549, Vernon's Annotated Civil Statutes, reads as follows:

"As soon as said bond be given and approved by the Commissioners Court, and the Comptroller, an order shall be made and entered upon the minutes of said Court designating such banking corporation, association or individual banker, as a depository for the funds of said county until sixty (60) days after the time fixed for the next selection of a depository; and thereupon, it shall be the duty of the county treasurer of said county immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities. It shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collection and settlement thereon. The bond of such county depository or depositories shall stand as security for all such funds. Upon such funds being deposited as herein required, the tax collector and sureties on his bond, shall thereafter be relieved of responsibility of its safekeeping. All county depositories shall collect all checks, drafts and demands for money so deposited with them by the county and when using due diligence shall not be liable on such collections until the proceeds thereof have been duly received by the depository bank, provided that any expense incurred in collection thereof by the depository, which the depository is not allowed or permitted to pay or absorb by reason of any act of Congress of the United States or any regulation by either the Board

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of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, shall be charged to and paid by the county. All money collected or paid by any district, county or precinct officer in such county, or the officers of any defined district or subdivision in such county, including the funds of any municipal or quasi-municipal subdivision or corporation which has the power to select its own depository, but has not done so, shall be governed by this law, and shall be deposited in accordance with its requirements, and shall be considered in fixing the bond of such depository, and shall be protected by such bond; and all warrants, checks, and vouchers evidencing such funds shall be subject to audit and countersignature as now or hereafter provided by law."

The withdrawal of funds from depositories is regulated by the statutes. (Articles 2552, 2553 and 2554, Vernon's Annotated Civil Statutes). Tax money deposited in county depositories may be paid to treasurers entitled to receive the same, or it may be withdrawn from the depository upon checks of the treasurer drawn by authority of lawful warrants and countersigned by the auditor.

It is a well established principle of law that commissioners' courts are courts of limited jurisdiction, in that their authority extends only to matters pertaining to the general welfare of their respective counties and that their powers are only those expressly or impliedly conferred upon them by law, that is, by the Constitution and statutes of the State.

It is apparent from your letter that the Olton State Bank was not selected as the county depository for Lamb County. In view of Article 2549, supra, it is apparent that all money belonging to the county must be placed in the selected county depository, and the commissioners' court has no legal right or authority to place the \$100,000 in any place except the selected county depository. It is our further opinion that the commissioners' court has no legal right or authority to accept and approve a bond given by the Olton State Bank, given for the safe keeping of the money placed in said bank. The \$100,000 should be withdrawn from the Olton State Bank and placed in the duly selected and designated county depository.

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With reference to the liability of the county depository and the liability of the members of the commissioners' court relative to the \$100,000 which was withdrawn from said county depository and deposited in the Olton State Bank, we think, as there is no loss suffered or sustained by the county, that it is not necessary to pass on these particular matters at this time. However, as above stated, the \$100,000 should be withdrawn from the Olton State Bank and placed in the duly selected and designated county depository. In the event any loss is suffered or sustained by the county by reason of the above mentioned transaction, we shall be glad to pass upon the liability of the county depository, their sureties, and the members of the commissioners' court when presented with this question and all of the facts in connection therewith.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Ardell Williams

Ardell Williams
Assistant

APPROVED JUN 6, 1941

George C. Allen

FIRST ASSISTANT
ATTORNEY GENERAL

AW:N

