

CHAPTER 118

DEPOSITORIES OF PUBLIC FUNDS

118.01 DEPOSITORY BONDS.

HISTORY. 1925 c. 173 s. 1; M.S. 1927 s. 1973-1; 1929 c. 370 s. 1; 1933 c. 41 s. 1.

SCOPE OF THE STATUTE. This act relates generally to depositories of county, city, village, borough, town, and school funds. 1926 OAG 144.

EFFECT OF THE ACT. This act does not amend or supersede General Statutes 1923, Section 1841, but merely authorizes the depository to assign collateral security in lieu of a bond if it so desires. 1926 OAG 139.

STATUTE CREATES EXCEPTION AS TO SECURING DEPOSITS. Except as this statute expressly gives the right to secure municipal deposits a state bank has no power generally to give security for deposits. *Farm. & Mer. St. Bank v Con. School Dist. No. 3*, 174 M 286, 219 NW 163, 65 ALR 1407. See 1928 OAG 3; 1930 OAG 198.

A commercial bank has no power to pledge bills receivable to secure deposits of county funds under the Minnesota law. *Farmers St. Bank of Gatzke v County of Marshall*, 175 M 363, 221 NW 242.

See 12 MLR 408, and 13 MLR 145.

STATE BANK; PLEDGE OF ASSETS TO SECURE FEDERAL DEPOSITS. A state bank may give a bond to secure the federal government for a deposit of postal savings funds, but it may not pledge any portion of its assets. 1932 OAG 6.

NATIONAL BANKS; PLEDGE OF ASSETS TO SECURE DEPOSITS OF FEDERAL GOVERNMENTAL AGENCIES. See 25 MLR 368.

NATIONAL BANKS; PLEDGE OF ASSETS TO SECURE DEPOSITS OF STATE OR POLITICAL SUBDIVISION. 1934 OAG 207.

UNAUTHORIZED PLEDGE, DISAFFIRMANCE. Where a bank having no power to, secures deposits the receiver of the bank may disaffirm the transaction without a return of the deposit. *Farm. & Mer. State Bank v Con. School Dist. No. 3*, 174 M 286, 219 NW 163, 65 ALR 1407.

WHAT COLLATERAL IS AUTHORIZED. The provision allowing the pledge of notes secured by first mortgages (Laws 1933, Chapter 41, Section 1) was inserted without expressly repealing the clause which prohibited the pledge of bonds secured by real estate but was intended to modify that prohibition. 1938 OAG 44, 1938 OAG 126.

BONDS OF JOINT STOCK LAND BANK. Bonds issued by a joint stock land bank are not "bonds secured by real estate" within the meaning of this section and hence may be accepted as collateral security from a depository. 1926 OAG 142.

CUSTOMERS' NOTES. Customers' notes cannot be pledged as collateral. *Farm. & Mer. State Bank v Con. School Dist. No. 3*, 174 M 286, 219 NW 163; *Farmers State Bank of Gatzke v County of Marshall*, 175 M 363, 221 NW 242; 1932 OAG 2.

SCHOOL DISTRICT WARRANTS. Warrants of a school district may not be accepted as collateral. 1926 OAG 147; 1928 OAG 144.

VILLAGE WARRANTS. A village order or warrant may be given as collateral. 1928 OAG 144.

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COUNTY BONDS WHERE INDEBTEDNESS EXCEEDS TEN PER CENT OF ASSESSED VALUATION. The bonds of a county where its net indebtedness exceeds ten per cent of its assessed valuation are not acceptable investments for savings banks under General Statutes 1923, Section 7714, as amended by Laws 1927, Chapter 368, and for that reason may not be given as collateral security for public funds deposited under the provisions of section 118.01. 1928 OAG 143; 1934 OAG 37 and 57.

H.O.L.C. AND F.F.M.C. BONDS. Home Owners Loan Corporation and Federal Farm Mortgage Corporation bonds may be deposited as collateral. 1936 OAG 8.

FEDERAL HOUSING MORTGAGES which the Federal Housing Administrator has insured, or made a commitment to insure, are eligible as collateral. 1938 OAG 126.

CERTAIN TRUST AGREEMENTS. Trust agreements or participating certificates (Phelps Plan Trust) that are secured by first mortgages insured by the Federal Housing Administration are eligible as collateral. 1938 OAG 44.

TELEGRAPH COMPANY BONDS. Bonds of a telegraph company as collateral. 1934 OAG 859.

Section 50.14 describes the securities authorized for investment by savings banks. See 1940 OAG 54.

BOND OF ANY STATE OR ITS AGENCY. Agency does not include cities. 1926 OAG 143.

UNAUTHORIZED COLLATERAL, PLEDGE OF, CLAIMS UPON. The county has no valid claim upon the securities pledged and delivered to it which were not eligible securities within the meaning of our statute. 1932 OAG 3.

AMOUNT OF COLLATERAL. Depositories, in what amount the bonds or collateral should be. 1932 OAG 13.

The amount of collateral which may be pledged to secure an authorized deposit is not limited. 1930 OAG 198.

GIVING SECURITY IN ADDITION TO PERSONAL BOND. This section contemplates that security additional to that afforded by the personal bond may be given. School Dist. No. 75 v Farmers State Bank, 182 M 381, 234 NW 594.

Under this section deposits may be secured both by collateral deposit and by bond, but each must stand as security for the total deposit. 1930 OAG 196; 1932 OAG 4.

SUBSTITUTION FOR PERSONAL SURETY BOND. To make a legal substitution of collateral for the personal bond of the sureties a contract is necessary. School Dist. No. 75 v Farmers State Bank, 182 M 381, 234 NW 594.

TREASURER MAY ACCEPT BONDS OF OWN COUNTY. There is no legal reason why a county treasurer may not accept bonds of his own county as collateral security if the bonds are otherwise qualified. 1928 OAG 143; 1928 OAG 144; 1934 OAG 57.

NOTES SECURED BY FIRST MORTGAGES AS COLLATERAL; ASSIGNMENT; RECORDING. The assignment to the county of real estate mortgages deposited as collateral for county funds should be recorded. 1934 OAG 205. (Other questions in connection with assignment and recording treated.)

APPROVAL. Collateral as security for county funds offered in lieu of depository bonds must now be approved by the county board rather than the board of audit. 1930 OAG 192; 1934 OAG 199.

Collateral substituted for collateral must be approved by the county board. 1930 OAG 191.

FILING OF DEPOSITORY BONDS WITH COUNTY AUDITOR. This section requires the filing of the depository bonds which are necessitated by other independent statutes. 1930 OAG 189.

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CUSTODY OF COLLATERAL, RESPONSIBILITY FOR. The county treasurer is an insurer of the safety of the collateral securities so far as the county is concerned. 1927 OAG 144½.

The county is not liable to the depository bank for the negligence or wrongdoing of the county treasurer or the safe-keeping bank. 1928 OAG 144½.

The act gives the treasurer no specific authority to transfer the custody of the collateral securities to a third party. A custom is permissible that does not call for actual delivery of the securities to the treasurer where they are placed for safe keeping with a bank without charge to the county and a safekeeping receipt is issued by such bank to the treasurer. This custom does not relieve the treasurer of his absolute liability for the safety of the securities. 1928 OAG 144½.

EXPIRATION OF TERM AS DESIGNATED DEPOSITORY. The treasurer may not allow county funds to remain in a depository bank whose term as a designated depository has expired, and he will be personally liable for any loss that may result from permitting them to remain. 1934 OAG 201.

As to funds on deposit at the time of expiration of the designated period, the county continues to hold the collateral as preferred creditor. 1934 OAG 201.

A depository bank whose term as a designated depository has expired is under an absolute duty to pay over as this section provides, and no demand on the part of the county need be made. 1934 OAG 201.

DEFAULT; WHERE BOND GIVEN, WHERE COLLATERAL GIVEN. The treasurer's bondsmen are not relieved from liability in case of bank failure where the designated depository of school funds has not been required to give a bond nor furnished securities in lieu of bond, but the trustees do not become personally liable in event of failure. 1926 OAG 148; 1934 OAG 84.

When the bank was designated as a depository and the surety bond approved, this had the effect of relieving the treasurer from personal liability for the loss of funds caused by the closing of the bank up to the amount that might be legally deposited therein under the designation. 1932 OAG 3.

The closing of the bank was a default and no demand was necessary; the sureties' liability became absolute on the closing. School Dist. No. 75 v Farmers State Bank, 182 M 381, 234 NW 594.

The liability of depository sureties on the bond is limited to the penalty of the bond and is not security for unauthorized deposits in excess of the contractual and statutory maximum. City of Ortonville v Hahn, 181 M 271, 232 NW 320.

When the bank closed the liability of the depository sureties became absolute for the full amount of the penalty of the bond; on payment they may be subrogated to the rights of the obligee. City of Ortonville v Hahn, 181 M 271, 232 NW 320.

COLLATERAL SECURITY, REALIZATION ON IN CASE OF BANK FAILURE. The county board has authority to sell and apply the proceeds to the payment of the deposit if the assignment is in the form required by this section. 1928 OAG 142.

If the county board unreasonably delays the sale of the collateral after failure of the depository to pay over the moneys to the treasurer, it will be charged with such loss as occurs from a fall in the market value of the security. 1934 OAG 201.

OVER-DEPOSITS. No statute forbids the treasurer from depositing funds in his hands in a bank for safekeeping when no depository bank has been designated or where the one designated has received the limit. City of Cloquet v Northwestern State Bank, 172 M 324, 215 NW 174.

The provision which forbids the treasurer from maintaining a deposit in excess of an amount ten per cent less than their face does not make over-deposits a crime and subject the official to prosecution under section 620.02. City of Cloquet v Northwestern State Bank, 172 M 324, 215 NW 174; Farmers & Mer. State Bank v Con. School District No. 3, 174 M 286, 219 NW 163, 65 ALR 1407.

Funds deposited in excess of the maximum allowable do not become ex maleficio trust funds. City of Cloquet v Northwestern State Bank, 172 M 324, 215

NW 174, Farmers & Mer. State Bank v Con. School Dist. No. 3, 174 M. 286, 219 NW 163, 65 ALR 1407.

The city treasurer made deposits in a duly designated depository in excess of the collateral securities given by the bank in lieu of the depository bond and the bank thereafter became insolvent, held, the city could not claim the over-deposits as a preferred claim over the general creditors of the bank, it not appearing that other depositories had been duly designated when the over-deposits were made. City of Cloquet v Northwestern State Bank, 172 M 324, 215 NW 174.

118.02 EFFECT OF EXISTING CONTRACTS.

HISTORY. 1925 c. 173 s. 2; M.S. 1927 s. 1973-2.

Even though a lease conveys no actual interest in the land itself and as such is not real estate, yet, when it is for a term, it is, under Minnesota constitution and statutes, property for which, in condemnation compensation must be made. An award may be made in gross and be apportioned thereafter between the parties according to their interests, and all parties are bound by the award as fixed, and any party entitled to a share may bring suit to recover his share. Seabloom v Krier, 219 M 362, 18 NW(2d) 88.

118.03 SECTIONS 9.08 AND 9.11 SUPERSEDED IN PART.

HISTORY. 1925 c. 173 s. 3; M.S. 1927 s. 1973-3.

118.04 SECTION 9.11 SUPERSEDED IN PART.

HISTORY. 1925 c. 265 s. 5; M.S. 1927 s. 1973-4.

118.05 DEPOSITORIES IN CITIES OF THE FIRST CLASS; SECURITIES IN LIEU OF BONDS.

HISTORY. 1925 c. 202; M.S. 1927 s. 1973-5.

118.08 CERTAIN BANKS MAY BE DEPOSITORIES.

HISTORY. 1929 c. 262; M. Supp. s. 1973-8.

118.09 TREASURER TO BE REIMBURSED FOR LOSSES.

HISTORY. 1931 cc. 35, 279; M. Supp. s. 1973-9.

Construction. 1932 OAG 283.

118.10 DEPOSITORIES INSURED UNDER FEDERAL ACT EXCUSED FROM GIVING SECURITY TO EXTENT OF INSURANCE COVERAGE.

HISTORY. Ex. 1934 c. 62 s. 1; M. Supp. s. 1973-10.

EXCUSED FROM GIVING SECURITY TO EXTENT OF INSURANCE COVERAGE. A bank whose deposits are insured by the Federal Deposit Insurance Corporation may be designated a depository and not be required to furnish bond or collateral, in so far as the deposit is within the terms of section 118.10. 1936 OAG 6.

MAXIMUM AMOUNT OF DEPOSIT THEREIN. The maximum amount which may be deposited without securing a bond or other security therefor is the amount only in so far as such fund shall constitute "insured deposit liabilities". 1934 OAG 26.

The amount allowed to be deposited in a depository bank whose deposits are insured without requiring collateral security was not intended to be in addition to the amount authorized by Laws 1931, Chapter 216, as amended, but an enlargement of the amount that chapter authorized. 1936 OAG 4.

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DEPOSITORY MAY FURNISH COLLATERAL AS ADDITIONAL SECURITY. No rights are waived under the Federal Guaranty Act by accepting collateral from a depository for the protection of its funds. If the depository does furnish collateral it may be regarded as additional security and not security in lieu of the federal insurance. 1934 OAG 322.

RELEASE OF SECURITIES TO EXTENT OF DEPOSIT INSURANCE. The release of securities to the extent of the insurance of deposits, pursuant to the Act of Congress, is optional with the county under section 118.10 where the depository contracts existed prior to the passage of this legislation. 1934 OAG 36.

SECTION 118.10 CONSTRUED. 1934 OAG 85, 86; 1936 OAG 4.

118.11 LIMITATION OF DEPOSITS DEPENDENT ON CAPITAL AND SURPLUS; APPLICATION.

HISTORY. 1935 c. 318 ss. 1, 2; M. Supp. ss. 1973-12, 1973-13.

118.12 DEPOSIT OF TOWN AND SCHOOL DISTRICT FUNDS WITH COUNTY TREASURER IN CERTAIN CASES.

HISTORY. 1937 c. 250 s. 1; M. Supp. s. 1973-14; 1943 c. 77 s. 1.

Funds raised by a bond issue for the purpose of building an addition to a school building could not be used because of war priority rules. Such fund must be kept for use when possible to devote to the purpose for which it was raised. Good business judgment indicates the money be put at interest in the interim if possible. 1942 OAG 42, April 24, 1942 (159a-13).

As to counties, section 118.12, controls over section 385.07. OAG May 8, 1944 (140a-1).

118.13 INVESTMENT OF FUNDS.

HISTORY. 1937 c. 250 s. 2; M. Supp. s. 1973-15.

Town securities must be deposited with the county treasurer who must receipt for same. The receipt must be filed with the town clerk. OAG March 31, 1944 (442a-14).

118.14 NEED NOT BE COVERED BY BONDS.

HISTORY. 1937 c. 250 s. 3; M. Supp. s. 1973-16.

118.15 DEPOSIT OF ST. LOUIS COUNTY FUNDS.

HISTORY. 1937 c. 430 s. 1; M. Supp. s. 1973-17.