

October 19, 1945

**LAW LIBRARY
ARIZONA ATTORNEY GENERAL**

Mr. E. J. Hilkert, Comptroller
Arizona State Teachers College
Tempe, Arizona

Dear Sir:

We have your letter of October 9, 1945, requesting our opinion on the following two questions:

1. Is the insurance of bank deposits, in the amount of \$5,000.00, which is provided depositors of insured banks by the Federal Deposit Insurance Corporation, separate and apart from, and in addition to the securities the bank deposits in trust for the protection of state funds?
2. Would the Federal Deposit Insurance Corporation, through subrogation, be entitled to indemnity from the securities deposited in the event it paid a claim because of failure of the bank?

With regard to the first of these questions, Section 10-302, Arizona Code 1939, provides for the designation of depositories for state moneys by the governor, the treasurer and the auditor. Section 10-303 (Amended) Arizona Code 1939, then provides as follows:

"Any bank, before receiving any such deposit, shall execute and deliver a bond, issued by a surety company approved by the treasury department of the United States and authorized to do business in this state, approved as to form by the legal advisor of the designating officers, and shall be in a penalty of not less than the amount the bank may receive on deposit, or may deposit with the state treasurer, county treasurer, or town or city treasurer, as the case may be. In lieu of a surety bond, the bank may: 1. deposit regularly issued and interest-bearing bonds of the following character: United States government bonds, state, county, municipal, and school district

improvement bonds, bonds of federal land banks, bonds of joint stock land banks, bonds issued or guaranteed by corporations operating a United States reclamation project within the state when issued or guaranteed with the approval of the secretary of the interior, any bonds the payment of interest and principal of which is guaranteed by the United States, bonds issued by any United States government, instrumentality or federal agency that qualify and are acceptable as security for public funds of the United States government, registered warrants of this state, registered county warrants when offered as security for moneys of the county by which they are issued; or 2. furnish the safekeeping receipt of any federal reserve bank or any bank located in a central reserve city whose combined capital and surplus on the date of the safekeeping receipt is ten million dollars (\$10,000,000) or more, evidencing the deposit therein of any of the bonds described in this section. The safe-keeping receipt shall be indorsed or assigned prior to the deposit thereof with the state treasurer, county treasurer, or town or city treasurer, as the case may be. * * * The condition of the surety bond, or the deposit of securities or a safekeeping receipt in lieu thereof, shall be that the bank will promptly pay to the parties entitled thereto public moneys in its hands, upon lawful demand therefor, and will, whenever thereunto required by law, pay such moneys to the treasurer making the deposit, with interest thereon as hereinafter provided."

Section 10-304, Arizona Code 1939, further provides:

"The bond shall be deposited with the treasurer making the deposit, and he shall be the custodian thereof. He may forthwith deposit with the bank, executing the bond, the public money then in his possession, in accordance with the provisions of this article, but not in an amount in excess of the bond or securities deposited."

The only basis which a depository of state, county, or city funds might have for deviating from the terms of the two statutes above-quoted as a result of the creation of the Federal Deposit Insurance Corporation would be by virtue of the provisions of Section 51-402, which Act is merely in the nature of an enabling act empowering banking institutions to

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enter into such contracts, incur such obligations, and perform such acts as may be necessary or appropriate to take advantage of any memberships, loans, subscriptions, contracts, grants, rights, or privileges which may be available or inure to banking institutions or their depositors, creditors, stockholders, conservators, receivers, or liquidators by virtue of the provisions of section 12B of the Federal Reserve Act, as amended, establishing the Federal Deposit Insurance Corporation.

This act is general in nature and in no way supersedes, alters, nor repeals any of the provisions of Sections 10-303 (Amended) and 10-304 of the Arizona Code 1939, which sections form a part of the statute especially enacted by the legislature and concerning the disposition and insuring of public moneys against loss. In passing such a statute it may reasonably be presumed that the legislature had in mind not only the securing of public funds against loss through financial failure of any designated depository, but also abrogation of the necessity of the state, a county, or city, of taking its chances of recoupment along with, and on the same plane as all other creditors in the event of such failure.

It is a well-established rule of law that a special act providing a special mode of procedure in a particular case is not affected by a subsequent general act relating to procedure, unless there is found in the subsequent act a direct indication of an intent to repeal such special act. (Favour vs. Frohmler 44 Ariz. 286; Rowland vs. McBride 35 Ariz. 511.) Certainly there is no indication of such intent contained in Section 51-402, Arizona Code 1939.

Hence, in an interpretation of these two statutes, it must be concluded that the provisions of Sections 10-303 (Amended) and 10-304, Arizona Code 1939, remain as valid and binding upon the depositories of public moneys at the present time as they were immediately after their taking effect.

In view of our interpretation of the statutes made in forming our opinion with regard to your first question, an answer to your second question becomes unnecessary since the situation covered there would doubtless never arise.

We are therefore of the opinion that the insurance of bank deposits, in the amount of \$5,000.00, which is provided depositors of insured banks by the Federal Deposit Insurance Corporation, while being separate and apart from, and in addition to the securities the bank deposits in trust for the protection of public funds, does not relieve the bank from strict compliance with the provisions of Sections 10-303 (Amended) and 10-304, Arizona Code 1939, but in effect actually provides double coverage for such funds in the amount of \$5,000.00.

Very truly yours,

JOHN L. SULLIVAN, Attorney General

EARL M. LINES, Ass't. Attorney General

HARRY O. JULIANI
Chief Assistant
Attorney General
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