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FDIC INSURANCE OF MUNICIPAL DEPOSITS

The following information should be of interest to municipal officials. It is from a letter dated July 29, 1977, from Miles A. Cobb, General Counsel of the Federal Deposit Insurance Corporation, to U.S. Representative Albert Gore, Jr.

"You recently referred an inquiry to this office from Mr. David Cooper, director of finance of the City of Gallatin, regarding the extent of FDIC insurance on public fund deposits. Mr. Cooper states that the city operates several separate gas and electric utilities, each of which is a self-supporting entity, and he inquires if these utilities can be classified as individual 'political subdivisions' so that they will qualify for separate deposit insurance coverage.

"As Mr. Cooper notes in his letter, the insurance on such public fund deposits is governed by Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) and by Section 330.8 of our regulations. Under Section 3(m), the 'official custodian' of public funds is considered to be the depositor, not the public unit itself. Each custodian is insured to the maximum of $100,000 on all time and savings deposits maintained in an insured bank, and to an additional $40,000 on its demand deposits with the same institution. If there is more than one 'official custodian' for the same public unit, the funds deposited by each such custodian would be separately insured to the above limits.

"The term 'public funds' is not defined in the FDI Act. However, the FDIC has consistently held that ownership by the federal government, or any state or municipal instrumentality mentioned in Section 3(m) (or any political subdivision thereof) is the test which must be applied. If a public official deposits funds of several separate public units such as municipal funds, state funds and/or federal monies, he would be entitled to separate insurance coverage on deposits owned by each such separate public entity. Trust funds held by a public official for private individuals would be insured as the deposits of those persons.

"Whether the municipal utilities, such as those described in Mr. Cooper's letter, can be classified as separate political subdivisions must be determined by application of the requirements set forth in Section 330.8(c) of our regulations. These requirements are:

(1) Its creation is expressly authorized by state statute.
(2) Some functions of government are delegated to it by state statute.
(3) Funds have been allocated by statute or ordinance for its exclusive use or control.

(more)
"Our examination of the Tennessee Code provisions authorizing establishment of various types of municipal public utilities indicates that all of the above requirements have been met (Tenn. Code Ann. §§ 6-1301 - 1318). Section 6-1303 specifically authorizes a municipality to establish such public utilities, Section 1304(2) authorizes the municipality to 'separate and maintain' such utilities, and Section 6-1310 provides that funds used to operate the utility may be procured from the issuance of utility bonds which may or may not contain covenants regarding the use of bond proceeds and the establishment of reserves for the redemption of such bonds. Thus, each public utility appears to be a separate entity and the deposits owned by it would be separately insured to the maximum amounts allowed to public funds under Section 3(m).

"Where reserves are established for the redemption of specific bond issues, such funds are held by the depositor (i.e., the public official) as trustee for each of the individual bondholders. Each bondholder has a beneficial interest in the account which is separately insured to the maximum of $40,000 even though all of the funds are commingled in a single deposit. Thus, a single account may be insured to an extremely high figure where deposits of many different individuals are involved.

"To answer the specific questions posed in Mr. Cooper's letter, the four demand accounts maintained by the city and three separate utilities with the same bank would be insured to a total of $160,000. The time deposits of each of these entities, likewise, would each be insured to the $100,000 maximum. If the same individual or board should be the 'official custodian' of more than one public unit, that custodian would be insured to the above limits on the funds of each separate entity."

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