

**OPINION  
66-230**

March 18, 1966 (OPINION)

Mr. Wallace D. Berning  
Assistant State's Attorney  
Ward County

RE: Public Funds - Depositories - Interest Rates

This is in response to your request for an opinion regarding section 21-04-18 of the North Dakota Century Code, which provides as follows:

INTEREST RATES. The rate of interest on all public funds deposited as provided in this chapter shall not exceed two percent on daily balances subject to check or draft, credited monthly, and shall not exceed four percent on time deposits. Depositories of public funds in this state shall pay substantially the same rate of interest thereon as such banks pay to individual depositories (sic) upon individual deposits."

Your specific question is whether or not the last sentence of the above quoted section is controlling or whether the earlier limitations are to be considered.

The history of this section discloses that it was enacted under Chapter 199, section 13 of the 1923 Session Laws. The language employed in the section is substantially the same as it is found now, except the rates of interest for demand deposits were set at a minimum of two percent and a maximum of three percent, for for time deposits at a rate of minimum of four percent and a maximum of six percent. The initial act contained the same language as found now in the last sentence of the present act. This section was amended in 1927 by Chapter 222, at which time the Legislature merely changed the rates by providing a minimum of one and one-half percent and a maximum of three percent on demand deposits, and a minimum of three and one-half percent and a maximum of five percent on time deposits. In 1931 the Legislature again changed the rates by Chapter 222, at which time the present rates were adopted. It should be observed that the amendment in 1931 eliminated the minimum rate and merely provided for a maximum rate for both demand deposits and time deposits. It is also observed that in the course of revision the term "depositors" was erroneously spelled as "depositories." This apparently is merely a clerical error and has no legal significance as to the question at hand.

In reviewing the legislative history, it becomes apparent that the Legislature throughout provided limitations on either the minimum or maximum rates for different types of deposits. If the last sentence were to be controlling there would have been no need for setting out minimum or maximum rates of interest. The last sentence must be construed together with the other provisions of the same section. In doing so the last sentence

merely provides that the rate of interest, within the limitations set forth, should be the same as that which is paid to the individual depositors on deposits.

This question was indirectly considered in an opinion dated September 24, 1963, addressed to Mr. George M. Thompson. We do not wish to comment regarding the wisdom on setting a minimum or maximum rate for this is a matter for the Legislature to determine; however, we recognize that we are limited to the legislation enacted and the results obtained therefrom.

On the basis of the foregoing, it is our opinion that the interest rates established in section 21-04-18 of the North Dakota Century Code are the maximum that may be paid on public funds until the Legislature either eliminates the limitations set forth or provides for higher limitations.

It is our further opinion that the last sentence be designed to permit a variation only within the limitations set forth earlier and does not authorize complete disregard for the limitations set by the legislature.

HELGI JOHANNESON  
Attorney General