

MEMORANDUM OF LAW

DATE: July 7, 1987

TO: Raymond Day, Investment Officer via Conny  
Jamison, City Treasurer  
FROM: City Attorney  
SUBJECT: Excess Funds at Trustee

Your memorandum of May 26, 1987 requested our views on possible restrictions under the Government Code governing the deposit of securities cash settlement funds in an out-of-state bank depository. You have advised us that you maintain a custodian account at Manufacturers Hanover Trust (MHT) in New York, by means of which you avoid double - handling charges for certain sales of securities. The custodian account was authorized pursuant to Resolution No. R-261924 adopted November 13, 1984.

MHT acts as the custodian of securities owned and traded by the City. Cash settlement of these transactions and delivery take place in New York City. Although most transactions result in funds being transmitted to San Diego the same day, there are times where the receipts are held overnight and any interest earned is then generated for the City's account.

You have asked whether this overnight deposit of City funds would violate Government Code section 53635. We conclude it does not and that the procedure is legally appropriate. Our reasoning follows:

Government Code section 53635 provides in pertinent part as follows:

As far as possible, all money belonging to, or in custody of, a local agency, including money paid to the treasurer or other officer to pay the principal, interest, or penalties of bonds, shall be deposited for safekeeping in state or national banks, savings associations or federal associations or credit unions in this state selected by the treasurer or other official having the legal custody of the money; or, unless otherwise

directed by the legislative body pursuant to Section 53601, may be invested in the following:

\* \* \*

Emphasis added.

This particular section was amended in 1986 (Stats. 1986, ch. 583, section 3.5) to add the words "this" between "in" and "state" in lieu of the word "the". As that section formerly read, it allowed the treasurer to select the state of repository, without limiting it to the State of California. Now, the section generally requires the depository to be in California, "as far as possible."

There are no cases construing this section. The phrase "as far as possible" may be defined to mean to the extent feasible, or, as something that is neither necessitated nor precluded from existing. Black's Law Dictionary (5th Ed. 1979) further defines the word "possible" to mean: "It is also sometimes equivalent to 'practicable' or 'reasonable', as in some cases where action is to be taken 'as soon as possible.'" Id at 1049.

In this context, we conclude that the phrase "as far as possible" is not an absolute, and the legislature chose not to make the provisions of that section mandatory. Such a result is consistent with California Constitution article XI, section 11, which allows the legislature to provide for the deposit of public moneys in banks, savings and loan associations and credit unions in California, but it does not limit such deposits to California. That section further allows for the investments of public money in securities by private bodies both within and without the state when acting as trustees or fiscal agents for public bodies.

Under the circumstances you describe, using an overnight out-of-state repository for funds, which thereby avoids double - handling charges, appears to be sound fiscal management and qualifies as a feasible alternative to using a California bank. Since the limitations do not compel a different result and the Government Code allows for such discretion, we conclude that the maintenance of the custodian account at MHT is lawful.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

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