

**OPINION 79-12**

To: Commissioner, Department of  
Banking and Finance

March 5, 1979

Re: Various questions pertaining to the securing of bank deposits made by political subdivisions.

This is in response to your request for my official opinion on several points of law concerning the securing of bank deposits made by political subdivisions. Your questions are restated and answered in turn.

(1) What type of security does the law require for bank deposits made by political subdivisions?

The general law in this area is contained in Ga. Code Ann. § 89-812, which is applicable both to municipalities and counties. Ga. Code Ann. §§ 89-801 and 89-804 (Ga. Laws 1933, p. 78, as amended). The requirement is for a bond or for the deposit of securities in trust to protect bank deposits of public funds. The section does not list which securities are acceptable, but Ga. Code Ann. § 100-108 (a) (amended by Ga. Laws 1973, p. 149; 1975, p. 917; 1976, p. 769; 1979, p. 399) provides a list of securities which can be used to protect state deposits. Since the policy of protecting public funds is presumably the same whether the funds are state funds or subdivision funds, in my opinion the Ga. Code Ann. § 100-108 (a) list should govern for purposes of Ga. Code Ann. § 89-812. In addition, I have previously rendered my opinion that assets of a bank other than the depository bank are not acceptable. Op. Att'y Gen. 74-118. Within the list of acceptable securities it would be up to the public officer to determine how funds subject to his control should be protected.

It should be noted that insurance coverage provided by the Federal Deposit Insurance Corporation and the Federal Saving and Loan Insurance Corporation is recognized by Ga. Code Ann. § 100-108 (a) (5). Moreover, Ga. Laws 1939, p. 399, specifically provides that Western & Atlantic Railroad warrants may be used to secure bank deposits. With particular reference to county deposits, I would call your attention to Ga. Code (1933) § 23-1018, which requires execution of a bond sufficient to protect the county treasurer against loss.

(2) What type of security does the law require for bank certifi-

cates of deposit purchased by political subdivisions?

Despite the fact that certificates of deposit are treated as "deposits" rather than "investments" for some purposes, for purposes of security they are deemed to be investments, and this makes applicable a different set of standards. Georgia Code Ann. § 23-3001 (Ga. Laws 1964, p. 741; 1973, p. 1192) provides that certificates of deposit must be protected specifically by (1) FDIC insurance and (2) direct obligations of the State of Georgia or the United States, to the extent that FDIC coverage is exceeded.

(3) Is the obligation to ensure that security be adequate imposed on the political subdivision, on the bank, or on both?

While Ga. Code Ann. § 89-812 could be read to impose the obligation solely on the political subdivision, I adhere to the view expressed in Op. Att'y Gen. 1962, p. 24, that both the political subdivision and the bank are obligated to ensure the protection of public funds. This conclusion was also reaffirmed in Op. Att'y Gen. 74-118. In support of this conclusion I note that Ga. Code Ann. § 89-804 applies the law in this area to "depositories of such funds," as well as to political subdivisions.

(4) What are the obligations of the department upon discovering an apparent violation of the law with respect to deposit security?

Since the duty to comply with the deposit security law falls upon institutions under the supervision of the department, the department is obligated to take whatever steps are necessary to ensure that violations are cured and not repeated. The department's obligation is in addition to the obligations imposed upon the Comptroller General and other officials by Ga. Code Ann. §§ 89-817 and 89-818. The department has discretion to decide what actions are appropriate in an individual case. Ga. Code Ann. § 41A-316 (Ga. Laws 1974, pp. 705, 740). In many cases all that would be required would be to call the attention of management to violations discovered during an examination. In more serious cases the department could issue a cease and desist order (Ga. Code Ann. § 41A-402(d)), remove bank officers (Ga. Code Ann. § 41A-312(a)), seek judicial orders (Ga. Code Ann. §§ 41A-402(3) or 41A-404), or even institute a receivership (Ga. Code Ann. § 41A-701(a)(3)). [Ga. Laws 1974, p. 705 et seq.]

You have asked specifically whether or not the department may report deficiencies uncovered during an examination to the local officials involved. In my opinion such a report may properly be made. Restrictions on disclosure of information obtained during

bank examinations are designed to protect the privacy of banks and their customers. See Ga. Code Ann. § 41A-311. To withhold knowledge of violations of law from the officials who have placed public funds in a bank serves no legitimate interest of the bank and threatens serious injury to the public. The General Assembly could not have intended to limit disclosure in these circumstances.

### OPINION 79-13

To: Administrator, Georgia Office of Fair  
Employment Practices

March 12, 1979

Re: The Office of Fair Employment Practices does not have the authority to conduct systemic investigations into public employment.

This is a response to your letter requesting my official opinion on whether the Office of Fair Employment Practices may pursue systemic investigations into state employment. Specifically, you question whether the Administrator of the Office of Fair Employment Practices has the authority to "investigate the hiring, discharging and promoting practices" of public employers, and publish those findings where the administrator encounters public employers engaging in unlawful, discriminatory practices.

As you know, the Office of Fair Employment Practices (hereinafter "OFEP") was created by the Fair Employment Practices Act of 1978, Ga. Laws 1978, p. 859 (Ga. Code Ann. § 89-1701, et seq.). OFEP is granted only such authority as the legislature has delegated to it. See *Bentley v. State Board of Medical Examiners of Georgia*, 152 Ga. 836, 111 S.E. 379 (1922). OFEP has no jurisdictional authority to either investigate or act outside that area of its delegated authority. Whether OFEP has the authority to conduct a systemic investigation into state employment can only be determined after review of the Fair Employment Practices Act of 1978 (hereinafter "Act").

A provision in the Act which sets out the investigative powers of OFEP is Ga. Code Ann. § 89-1718:

"(a) In connection with an investigation of a complaint of an unlawful practice filed under this Chapter, the administrator and the respondent or their designees at any reasonable time shall have access to premises, records and documents relevant to the complaint and the right to examine, photograph and copy evidence.