

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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August 3, 2009

Opinion No. 09-146

Deposits by the Clerk and Master

QUESTION

Whether a bank participating in the state collateral pool is required to collateralize funds deposited by the Clerk and Master on behalf of a litigant?

OPINION

Yes.

ANALYSIS

This opinion concerns the deposit of funds by a county official.¹ The specific question is whether a bank participating in the state collateral pool is required to collateralize funds deposited by the Clerk and Master on behalf of a litigant. To answer this question, it is necessary to examine the statutory provisions governing the state collateral pool as well as the statutory provisions that govern how the funds of the State and its political subdivisions are to be held.

The statutes governing the deposit and the collateralization of county funds originate in the statutes that govern the deposit and collateralization of state funds. In 1985, the General Assembly provided that state funds held in state depositories must be collateralized, and it provided the method by which such funds had to be collateralized. *See* Tenn. Code Ann. §§ 9-4-401, *et seq.* In 1990, the General Assembly created an alternative method for the collateralization of state funds, as well as for the funds of the State's political subdivisions, when it enacted "The Collateral Pool for Public Deposits Act of 1990," which is largely codified at Tenn. Code Ann. §§ 9-4-501, *et seq.* Then, in 1992, the General Assembly amended Chapter 8 of Title 5 of the Tennessee Code, which governs the receipt and management of funds by counties; the General Assembly added a new subsection to Tenn. Code Ann. § 5-8-201 that provided as follows:

Notwithstanding any other law to the contrary, any county funds deposited in a bank on or after July 1, 1992, shall be secured in the same manner and under the

¹ The office of Clerk and Master is a county office. *Op. Tenn. Att'y Gen. 92-06* (January 24, 1992) (citing Tenn. Code Ann. §§ 8-24-101, *et seq.*); *see Burrus v. Wiseman*, 2009 WL 782818 (Tenn. Ct. App.).

same conditions as state deposits under Title 9, Chapter 4, Parts 1 and 4, or as provided in a collateral pool created under Title 9, Chapter 4, Part 5.

1992 Tenn. Pub. Acts, Ch. 592, § 5.

In 1994, the General Assembly similarly amended Tenn. Code Ann. § 5-8-207(a), which addresses the bank accounts that county officials must maintain. The General Assembly added a new subsection (2) to Tenn. Code Ann. § 5-8-207(a) that provided:

(2) All funds deposited with a bank or other financial institution shall be secured by collateral in the same manner and under the same conditions as state deposits under Title 9, Chapter 4, Parts 1 and 4, or as provided in a collateral pool created under Title 9, Chapter 4, Part 5.

1994 Tenn. Pub. Acts, Ch. 752, § 2.

These statutory provisions remain substantively identical today. Currently, Tenn. Code Ann. § 5-8-201(b) provides:

Any county shall require any financial institution that becomes a depository of county funds to secure such funds as provided in a collateral pool created under title 9, chapter 4, part 5, or in the same manner and under the same conditions as state deposits under title 9, chapter 4, parts 1 and 4.

And Tenn. Code Ann. § 5-8-207(a), in pertinent part, provides:

(1) Every county official handling public funds shall be required to maintain an official bank account in a bank or banks within this state, and shall, within three (3) days after the receipt by such county official of any public funds, deposit the funds to the credit of such county official's official bank account, or bank accounts. Each county official maintaining an official bank account is authorized to enter into such agreements with banks and other financial institutions as necessary for the maintenance of collateral to secure the funds on deposit. . . .

(2) All funds deposited with a bank or other financial institution shall be secured by collateral in the same manner and under the same conditions as state deposits under Title 9, Chapter 4, Parts 1 and 4, or as provided in a collateral pool created under Title 9, Chapter 4, Part 5.

Having established that the statutes governing the deposit and the collateralization of county funds originate in the statutes that govern the deposit and collateralization of state funds, we now seek to ascertain the legislative intent as to the type of funds that a bank participating in the state collateral pool is required to collateralize when a deposit of funds is made by a county official in accordance with Tenn. Code Ann. §§ 5-8-201, *et seq.* Tennessee Code Annotated section 5-8-201(b) provides that any financial institution that becomes a depository of “county

funds” shall collateralize such funds; Tenn. Code Ann. § 5-8-207(a)(1) states that every county official handling “public funds” shall deposit such funds within three days and enter into necessary agreements to collateralize such funds; and Tenn. Code Ann. § 5-8-207(a)(2) states that “all funds” deposited with a bank or other financial institution by a county official must be collateralized. While none of these provisions elaborates on the meaning of “county funds,” “public funds,” or “all funds,” these statutory provisions are clear in their directive that the collateralization of the funds is to be done in the same manner and under the same conditions as state deposits under Title 9, Chapter 4, Parts 1 and 4, or as provided in a collateral pool created under Title 9, Chapter 4, Part 5.

Your specific query involves collateralization under Tenn. Code Ann. §§ 9-4-501, *et seq.*, which provides for the collateralization of “public deposits” by the means of a state-wide collateral pool. Pursuant to Tenn. Code Ann. § 9-4-502(14), a “public deposit” is defined as follows:

(14) “Public deposit” means funds in which the entire beneficial interest is owned by a public depositor or funds held in the name of a public official of a public depositor charged with the duty to receive or administer funds and acting in such official’s official capacity.

The definition of “public deposit” is drawn from Tenn. Code Ann. § 45-2-611, which governs the assets that a bank may pledge. In fact, when “The Collateral Pool for Public Deposits Act of 1990” was enacted, the General Assembly originally provided that “‘public deposit’ shall have the same meaning as ‘public funds’ as set forth in Tenn. Code Ann. § 45-2-611.” 1990 Tenn. Pub. Acts, Ch. 1043, § 1. In this same 1990 Act, the General Assembly amended Tenn. Code Ann. § 45-2-611 as follows:

Tennessee Code Annotated, Section 45-2-611, is amended by deleting the section in its entirety and by substituting in lieu thereof the following:

(a) A bank may pledge its assets only:

- (1) To enable it to act as an agent for the sale of obligations of the United States;
- (2) To secure borrowed funds;
- (3) *To secure the public funds of a governmental entity;* and
- (4) For such other purposes as are approved by the commissioner.

(b) For the purposes of this section:

- (1) Governmental entity means the following:

(A) (i) The United States government or any agency thereof; or

(ii) Any instrumentality of the United States the funds of which are required by law to be secured;

(B) The state of Tennessee or any other state, counties, incorporated municipalities and their political subdivisions or any utility district organized under the laws of a state or an interstate compact.

(2) *Public Funds means:*

(A) *Funds in which the entire beneficial interest is owned by a governmental entity; or*

(B) *Funds held in the name of a public official charged with the duty to receive or administer funds and acting in his official capacity.*

(c) *A financial institution authorized to secure public funds of any governmental entity shall do so in the same manner and under the same conditions as state deposits under Tennessee Code Annotated, Title 9, Chapter 4 or as provided in a collateral pool as provided in this Act.*

1990 Tenn. Pub. Acts, Ch. 1043, § 3 (emphasis added).

While the General Assembly amended the definition of “public deposit” two years later to provide the definition that currently appears in Tenn. Code Ann. § 9-4-502(14),² this amendment did not change the meaning of “public deposit” with respect to the type of funds to be collateralized because the definition of “public deposit” remains the same as the definition of “public funds” in Tenn. Code Ann. § 45-2-611. The amendment changed the definition of “public deposit” only with respect to the nature of the depositor. Instead of using the term “governmental entity” and the definition thereof in Tenn. Code Ann. § 45-2-611, the amendment substituted the term “public depositor,” which had already been defined in the original 1990 Act as “the state of Tennessee, or any of its agencies, or any Tennessee County, Tennessee incorporated municipality and their political subdivisions, or any utility district organized under the laws of the state of Tennessee or any interstate compact to which the state of Tennessee is a party.” 1990 Tenn. Pub. Acts, § 1043, § 1 (currently codified at Tenn. Code Ann. § 9-4-502(16)). It is clear from this definition of “public depositor” that there is no person or entity that meets this definition that would not also meet the definition of a “governmental entity” in Tenn. Code Ann. § 45-2-611. Consequently, “public deposits” collateralized under Tenn. Code

² See 1992 Tenn. Pub. Acts, Ch. 592, § 12.

Ann. §§ 9-4-501, *et seq.*, are “public funds” that banks may pledge their assets as security for under Tenn. Code Ann. § 45-2-611.

As referenced earlier, the term “public funds” is used in Tenn. Code Ann. § 5-8-207(a). Moreover, we note that the General Assembly uses the term “public funds” in discussing the application of Chapter 4 of Title 9 to counties; Tenn. Code Ann. § 9-4-111, in pertinent part, provides:

(a) The provisions of this part [Part 1 of Title 9, Chapter 4] and parts 3 and 5 of this chapter apply to the deposit of *all public funds* by counties . . . including, but not limited to, those deposited under §§ 5-8-201, 5-8-207

Tenn. Code Ann. § 9-4-111(a) (emphasis added).

Based on the statutory provisions discussed above, we think public funds deposited by county officials in accordance with Tenn. Code Ann. §§ 5-8-201, *et seq.*, are required to be collateralized by banks participating in the state collateral pool when the deposited funds meet the definition of “public deposit” in Tenn. Code Ann. § 9-4-502(14). Statutes *in pari materia* -- that is, statutes relating to the same subject or having a common purpose -- are to be construed together and the construction of one such statute, if doubtful, may be aided by considering the words and legislative intent indicated by the language of another statute. *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994); *see In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005). That principle applies here. The General Assembly enacted Tenn. Code Ann. §§ 9-4-501, *et seq.*, at the same time it enacted Tenn. Code Ann. § 45-2-611, and the latter statute expressly refers to Chapter 4 of Title 9. Moreover, the General Assembly has twice amended Tenn. Code Ann. §§ 5-8-201, *et seq.*, and Tenn. Code Ann. §§ 9-4-101, *et seq.*, at the same time,³ and both statutory schemes expressly refer to each other.

Accordingly, we think the definition of “public deposit” in Tenn. Code Ann. § 9-4-502(14) applies to your particular query. Funds deposited by the Clerk and Master on behalf of a litigant constitute a “public deposit” because they are “funds held in the name of a public official of a public depositor charged with the duty to receive or administer funds and acting in such official’s official capacity.”⁴ *See* Tenn. Code Ann. § 9-4-502(14). Thus, a bank participating in

³ *See* 1992 Tenn. Pub. Acts, Ch. 592; 1994 Tenn. Pub. Acts, Ch. 752.

⁴ Of course, as a practical matter, the Clerk and Master should ensure that the litigants’ funds are, in fact, deposited in the name of the clerk in his or her official capacity, and not in the name of the litigants. Further, the Clerk and Master should be able to identify for the financial institution the source of his or her duty to receive or administer the particular litigants’ funds in question; for example, statute, court rule, or court order.

the state collateral pool is required to collateralize such a deposit in accordance with Tenn. Code Ann. §§ 9-4-501, *et seq.*⁵

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⁵ In Op. Tenn. Att’y Gen. 77-249 (August 4, 1977), this Office opined that funds held by the Clerk and Master for the benefit of a life tenant, and ultimately for remaindermen yet to be determined, were private funds rather than public funds. While the issue addressed in that opinion is tangentially related to the issue in this opinion, Op. Tenn. Att’y Gen. 77-249 addressed statutes that are not at issue in this opinion. Moreover, the statutes at issue in this opinion had not been enacted when the earlier opinion was issued.