



STATE OF WYOMING

DEPARTMENT OF AUDIT
AUDIT & COMPLIANCE DIVISION
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Cheyenne, WY 82002

Mike Sullivan, Governor
Ralph Thomas, Director
Guy E. Wiley, Administrator

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MEMORANDUM

TO: Local Government Treasurers
FROM: Karen Musgrave *Karen*
Local Government Program Coordinator
DATE: November 1, 1994

On April 2, 1993, our office provided your entity with some information on pledging and a copy of a Policy Statement from the Board of Directors of the FDIC. You may find it worthwhile to review this earlier information now. Recently other issues relating to interest earnings of excess public funds have been brought to our attention, mostly from the banking community. It appears to be a good time to remind you again, of some of the most common statutory compliance measures required for the investment of all public funds.

The Wyoming Statutes provide that the Treasurer is responsible for the safety of the entity's cash funds. (W.S. 9-4-823) In most cases, there should be documentation that the governing body has given authority to the treasurer to invest excess funds [W.S.9-4-831(b)], then the treasurer is responsible for investing in statutorily approved investments. This is one of the reasons you are required to be bonded. (W.S. 38-2-101)

Depositories are defined by the statutes, and neither stock brokers nor investment firms are depositories. (W.S. 9-4-817) The cash generated by investment sales and dividends or interest paid cannot be left on deposit with these organizations in a so-called "money market account". You must be sent a check for the proceeds of all investment transactions, made through any organization other than a "depository".

Computers have made many new products available through the investment and banking industries. One such banking product is known as "a sweep account" consisting of demand deposit accounts in combination with repurchase agreements. We have been asked if these are acceptable financial transactions per the statutes. This office is anxious to be of assistance but sweep accounts are handled in many different ways, and we cannot advise of the legality of such agreements.



Sweep accounts
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There have been several Attorney General Opinions issued over the past 6 or 7 years, some saying that they are OK, and some saying that they are prohibited. You may have copies of both in your files. Attached is the most recent opinion from Attorney General Joseph B. Meyer. You should consult with your attorney before making a determination of whether or not you choose to participate in any investment.

It is a very financially complex environment that we live in these days, and interest income can be material to even smaller-than-average public entities. It will be prudent for you to carefully investigate every potential vendor and product in this competitive market.

Attachment: A.G. Opinion dated October 3, 1994



THE STATE OF WYOMING

Attorney General

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October 3, 1994

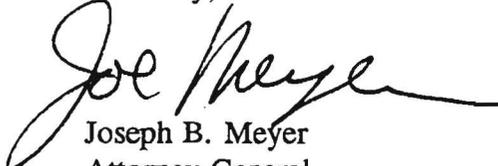
Sue E. Mecca
Wyoming Banking Commissioner
Department of Audit

Dear Commissioner Mecca:

You have requested advice regarding use of "Cash Management Sweep Accounts" by Wyoming governmental entities as described in the attached narrative. In my opinion such accounts are not authorized for use by enumerated Wyoming governmental entities at this time.

W.S. 9-4-816 through 9-4-831 provide that public funds held by counties, municipalities, community colleges and school districts may be deposited in enumerated financial institutions to the extent they are fully insured by FDIC or secured by a bond or a pledge of assets or may be invested in securities listed by W.S. 9-4-831 (whereby the securities are held in the name of the political subdivision). The sweep accounts are neither insured by FDIC nor secured by specific authorized and pledged securities, nor has an "investment" in authorized securities been made in the name of the political subdivision. Thus, Wyoming Statutes do not authorize the use of such accounts at this time and the provision of W.S. 9-4-824 relating to liability of public treasurers appears applicable if a loss of public funds occurs from the use of sweep accounts

Sincerely,


Joseph B. Meyer
Attorney General

cc: Ralph Thomas