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October 23, 2008

Jay Holmquist, General Manager
Nebraska Rural Electric Association
800 South 13th Street
P.O. Box 82048
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Re: Depositories and Security for Deposits

Dear Jay:

You have asked that I set out the statutory requirements governing the deposit of public power districts funds in financial institutions and the requirements for security if such deposits exceed the amount insured by the Federal Deposit Insurance Corporation.

This investment authority of public power districts is a separate issue and not covered in this opinion. The investment authority of public power districts is covered my opinion dated June 30, 2006, which appears on the Association website.

The requirements are set forth in several statutes referenced below. I will first paraphrase the statute, and then cite the statute verbatim.

1. All funds of public power districts are required to be deposited in a bank, capital stock financial institution, or qualifying mutual financial institution, designated as official depositories for such districts. The definition of a capital stock financial institution and a qualifying mutual financial institution is given in 12 and 10, respectively.

77-2353. Public power and irrigation district funds; deposit required.

All funds of any public power district, public irrigation district, or public power and irrigation district organized and existing under the laws of this state shall be deposited by the treasurer or other competent officer of such district in such bank, capital stock financial institution, or qualifying mutual financial institution as shall have been designated as official depositories for the funds belonging to such district. Such deposits shall either be made in accordance with and subject to agreements of such district with its bondholders or noteholders or, in the absence of

any such agreement, shall be subject to the provisions and conditions provided in sections 77-2353 to 77-2361. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

2. Depositories are required to be designated by the board of directors by formal resolution.

77-2354. Public power and irrigation district funds; designation of depositories.

Depositories shall be such banks, capital stock financial institutions, and qualifying mutual financial institutions as shall be from time to time designated by the board of directors of such district by formal resolution duly recorded in the minutes of the proceedings of such board. Such designation may be withdrawn at any time by the board of directors of such district by formal resolution duly entered upon its records, whereupon all such deposits, except those represented by time certificates of deposit, in such bank, capital stock financial institution, or qualifying mutual financial institution shall be immediately withdrawn. All deposits, except those invested in time certificates of deposit, shall be subject to payment on demand upon the check or order of the duly authorized officer or officers of the district. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

3. No deposit shall be made in excess of the amount insured by the Federal Deposit Insurance Corporation, unless the power district has received from such depository as security either a surety bond or security as provided in the Public Funds Deposit Security Act. The Public Funds Deposit Security Act is set forth in *Neb. Rev. Stat. § 77-23,100*.¹

¹ **77-23,100. Deposits in excess of insured amount; qualified trustee; duties.**

(1) Any bank, capital stock financial institution, or qualifying mutual financial institution in which public money or public funds have been deposited which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation by the deposit, pledge, or granting of a security interest in a single pool of securities shall designate a qualified trustee and place with the trustee for holding the securities so deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398. The bank, capital stock financial institution, or qualifying mutual financial institution shall give written notice of the designation of the qualified trustee to any custodial official depositing public money or public funds for which such securities are deposited, pledged, or in which a security interest has been granted, and if an affiliate of the bank, capital stock financial institution, or qualifying mutual financial institution is to serve as the qualified trustee, the notice shall disclose the affiliate relationship and shall be given prior to designation of the qualified trustee. The custodial official shall accept the written receipt of the trustee describing the pool of securities so deposited, pledged, or in which a security interest has been granted by the bank, capital stock financial institution, or qualifying mutual financial institution, a copy of which shall also be delivered to the bank, capital stock financial institution, or qualifying mutual financial institution.

(2) Any bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured by the Federal Deposit Insurance Corporation **under the Public Funds Deposit Security Act** by providing a deposit guaranty bond pursuant to the provisions of subsection (1) of section 77-2398 shall designate a qualified trustee and cause to be issued a deposit guaranty bond which runs to the qualified trustee and which is conditioned that the bank, capital stock financial institution, or qualifying mutual financial institution shall render to the qualified trustee the statement required under subsection (3) of this section.

(3) Each bank, capital stock financial institution, or qualifying mutual financial institution which satisfies its requirement to secure the deposit of public money or public funds in excess of the amount insured by the Federal

77-2355. Public power and irrigation district funds; depositories; bond or security required.

No deposits in excess of the amount insured by the Federal Deposit Insurance Corporation shall be made or be allowed to accumulate in any bank, capital stock financial institution, or qualifying mutual financial institution designated as a depository unless and until the treasurer or other competent officer of the district has received from such depository as security for the prompt repayment of such deposits by the depository either a surety bond in form and with corporate sureties approved by formal resolution of the board of directors of such district or, in lieu thereof, the giving of security as provided in the Public Funds Deposit Security Act. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

4. Deposits secured by a surety bond shall not exceed the penal sum of the surety bond.

77-2356. Public power and irrigation district funds; deposits; limitation.

The deposits secured by a surety bond shall at no time exceed the amount of the penal sum of such surety bond.

5. Every depository is authorized to secure deposits by giving a bond or security.

77-2357. Public power and irrigation district funds; depositories; power to enter into agreement.

Every depository is authorized to secure deposits by giving bond or giving security, as provided in sections 77-2353 to 77-2361, and otherwise to enter into and become a party to any contract or arrangement, not inconsistent with the provisions hereof, as may be reasonably necessary or proper to render fully effective the provisions of such sections. Section 77-2366 shall apply to

Deposit Insurance Corporation by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities shall, on or before the tenth day of each month, render to the qualified trustee a statement showing as of the last business day of the previous month (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution that is not insured by the Federal Deposit Insurance Corporation (i) by each custodial official separately and (ii) by all custodial officials in the aggregate and (b) the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest has been granted pursuant to subsection (1) of section 77-2398. Any qualified trustee shall be authorized, acting for the benefit of custodial officials, to take any and all actions necessary to take title to or to effect a first perfected security interest in the securities deposited, pledged, or in which a security interest is granted.

(4) Within ten days after receiving the statement required under subsection (3) of this section from a bank, capital stock financial institution, or qualifying mutual financial institution, the qualified trustee shall provide a report to each custodial official listed in such statement reflecting (a) the amount of public money or public funds deposited in such bank, capital stock financial institution, or qualifying mutual financial institution by each custodial official as of the last business day of the previous month that is not insured by the Federal Deposit Insurance Corporation and that is secured pursuant to subsection (1) of section 77-2398 and (b) the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted pursuant to subsection (1) of section 77-2398 as of the last business day of the previous month. The report shall clearly notify the custodial official if the value of the securities deposited does not meet the statutory requirement.

deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

6. The treasurer of the power district is required to keep and certify a complete and correct list and description of the securities furnished by any depository.

77-2358. Public power and irrigation district funds; depositories; duty of treasurer to keep list of securities.

The treasurer or other competent officer of the district shall at all times keep and certify to the district a complete and correct list and description of the securities furnished by any depository. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

7. Each depository is required to furnish to the district a sworn monthly statement of the funds of the district on deposit in such depository.

77-2359. Public power and irrigation district funds; depositories; statement of funds on deposit.

Each depository shall furnish directly to the board of directors of the district, or to an officer of the district designated by the board, a sworn monthly statement of the funds of the district on deposit in such depository.

8. The board of the power district has the authority to adopt rules and regulations governing the handling of district funds and the relationship between the district and its depository so long as such rules do not conflict with 77-2353 to 77-2361.

77-2360. Public power and irrigation district funds; deposit of funds; rules and regulations.

The board of directors of any such district may from time to time adopt and promulgate such rules and regulations governing the handling of its funds by the treasurer or other designated officers of the district and otherwise governing the relationship between such district and its depository as shall not conflict with the express provisions of sections 77-2353 to 77-2361 or other provisions of law. It shall be the duty of the treasurer and all other officers thus designated or otherwise charged by law with the handling of funds of the district to comply with such rules and regulations.

9. Neither the treasurer, any other officer of the district charged with handling funds, or their sureties shall be liable for any loss resulting from the failure of any bank, capital stock financial institution, or qualifying mutual financial institution.

77-2361. Public power and irrigation district funds; treasurer or other officer; not liable on bond.

Neither the treasurer, nor other officer of the district charged with the handling of its funds, nor their sureties shall be liable for any loss resulting from the failure of any bank, capital stock financial institution, or qualifying mutual financial institutions as to any such deposits made and maintained as provided in sections 77-2353 to 77-2361. Section 77-2366 shall apply to deposits

in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

10. Funds of a public power district may be deposited in a qualifying mutual financial institution and the power district does not need to become an owner of any interest in the institution or acquire any voting rights. Qualifying mutual financial institution means a state or federal mutual building and loan association, a state or federal mutual savings association, a state or federal mutual savings bank, or a state or federal mutual organized bank.

77-2365.01. Funds of state or political subdivisions; deposit with qualifying mutual financial institutions; conditions.

(1)(a) Notwithstanding any other provision of law, any local ordinance, regulation, or resolution, or any rule or regulation to the contrary, the funds of this state or any political subdivision of the state may be deposited, by the appropriate custodians of such funds, with qualifying mutual financial institutions to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, if any, as may be otherwise provided for the deposit of such funds in banks and capital stock financial institutions. In making such a deposit of public funds, it shall not be necessary for the state or any political subdivision to become an owner of any interest in the qualifying mutual financial institution or to acquire voting rights therein, and a qualifying mutual financial institution is authorized and empowered to receive public funds under these conditions. Qualifying mutual financial institution means a state or federal mutual building and loan association, a state or federal mutual savings and loan association, a state or federal mutual savings bank, or a state or federal mutual organized bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a qualifying mutual financial institution which maintained a main chartered office in this state prior to becoming a branch of such qualifying mutual financial institution, which, by its charter and bylaws, restricts the rights of the state or a political subdivision as an account holder as follows:

- (i) Interest in the qualifying mutual financial institution is limited to the withdrawal value of the state's or the political subdivision's account;
- (ii) The state or the political subdivision has no voting rights in the qualifying mutual financial institution; and
- (iii) The state or the political subdivision has no entitlement to any distribution of assets upon voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the qualifying mutual financial institution.

(b) To the extent any deposit in any bank is:

- (i) Required to be subject to check or draft, then such deposit may be subject to order; and
- (ii) Required to be made, maintained, or otherwise dealt with by reference to the capital of any bank, then it may be so made, maintained, or dealt with by reference to the capital or net worth of such qualifying mutual financial institution, and if by reference to the undivided profits, capital notes, debentures, or other capital items of any bank, then to any unimpaired reserves, capital notes, and debentures or comparable capital items of such qualifying mutual financial institution.

(2) To the extent the state or a political subdivision is or may ever be required by law to deposit funds in a bank, the state or political subdivision shall, to the same extent and subject to the same

terms, conditions, and limitations, including collateralization required, be required to make deposits in a qualifying mutual financial institution on the same basis.

(3) The restriction in subdivision (1)(a)(iii) of this section shall not apply to the interest of the state or political subdivision in any security required by law to be furnished by the qualifying mutual financial institution.

(4) A qualifying mutual financial institution that amends its charter or bylaws in such a manner that it no longer meets the restrictions set forth in subdivisions (1)(a)(i) through (iii) of this section shall immediately give notice that it is no longer a qualifying mutual financial institution to the custodial official, as that term is defined in section 77-2387, of every state and political subdivision depositor, and that the state or political subdivision must immediately withdraw its deposits.

(5) This section shall be applied in a manner consistent with the intention of the Legislature which is to provide for the deposit of funds of the state or any political subdivision in qualifying mutual financial institutions.

11. Funds of power districts may be deposited in certificate of deposits or time deposits with bank, capital stock financial institutions, or qualifying mutual financial institutions, if the entire deposit is insured by the FDIC and may be deposited in banks and other institutions in another state so long as such bank in another state deposits an equivalent amount in a Nebraska bank or financial institution.

77-2365.02. Funds of state or political subdivisions; investment in certificates of deposit and timed deposits; conditions.

Notwithstanding any other provision of law, to the extent that the funds of this state or any political subdivision of this state may be invested, by the appropriate custodian of such funds, in certificates of deposit or time deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization shall include the investment of funds in certificates of deposit and time deposits in accordance with the following conditions:

(1) The bank, capital stock financial institution, or qualifying mutual financial institution in this state through which the investment of funds is initially made arranges for the deposit of a portion or all of such funds in one or more certificates of deposit or time deposits with other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States;

(2) Each such certificate of deposit or time deposit is fully insured by the Federal Deposit Insurance Corporation;

(3) The bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds was initially made acts as a custodian for the state or political subdivision with respect to any such certificate of deposit or time deposit issued for the account of the state or political subdivision; and

(4) At the same time that the funds are deposited into and such certificates of deposit or time deposits are issued by other banks, capital stock financial institutions, or qualifying mutual financial institutions, the bank, capital stock financial institution, or qualifying mutual financial institution through which the investment of funds in certificates of deposit or time deposits was initially made receives an amount of deposits from customers of other banks, capital stock

financial institutions, or qualifying mutual financial institutions located in the United States which is equal to or greater than the amount of the investment of funds in certificates of deposit or time deposits initially made by the state or political subdivision.

12. Funds of power districts may be deposited with capital stock financial institutions if the deposit is insured by the FDIC and has the appropriate safe guards as required by the other statutes above. Capital stock financial institutions shall include state and national banks, capital stock state building and loan associations, capital stock federal savings and loan associations, capital stock state bank, and capital stock state savings banks, which have a main chartered office in this state.

77-2366. Funds of state or political subdivisions; deposit with capital stock financial institutions; conditions.

(1) Notwithstanding any other provision of law, any local ordinance or regulation, or any rule or regulation to the contrary, the funds of this state or any political subdivision of the state may be deposited, by the appropriate custodians of such funds, with capital stock financial institutions to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, if any, as may be otherwise provided for the deposit of such funds in banks. Capital stock financial institutions shall include state and national banks, capital stock state building and loan associations, capital stock federal savings and loan associations, capital stock federal savings banks, and capital stock state savings banks, which have a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution. To the extent any deposit in any bank is:

- (a) Required to be subject to check or draft, then such deposit may be subject to order; and
- (b) Required to be made, maintained, or otherwise dealt with by reference to the capital of any bank, then it may be so made, maintained, or dealt with by reference to the capital or net worth of such financial institution, and if by reference to the undivided profits, capital notes, debentures, or other capital items of any bank, then to any unimpaired reserves, capital notes, and debentures or comparable capital items of such other financial institution.

(2) To the extent the state or any political subdivision is or may ever be required by any law to deposit funds in any bank, the state or any such political subdivision shall, to the same extent and subject to the same terms, conditions, and limitations, including collateralization required, be required to make deposits in any capital stock financial institution on the same basis.

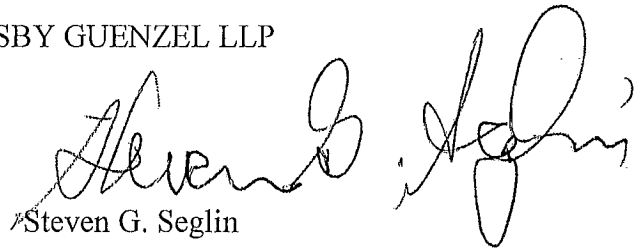
(3) This section shall be applied in a manner consistent with the intention of the Legislature which is to provide for the deposit of funds of the state and any political subdivision in capital stock financial institutions.

In conclusion, in order to protect the funds of the power district, each board should strictly follow these requirements.

Very truly yours,

CROSBY GUENZEL LLP

By



Steven G. Seglin

SGS:tlh