Depository Law

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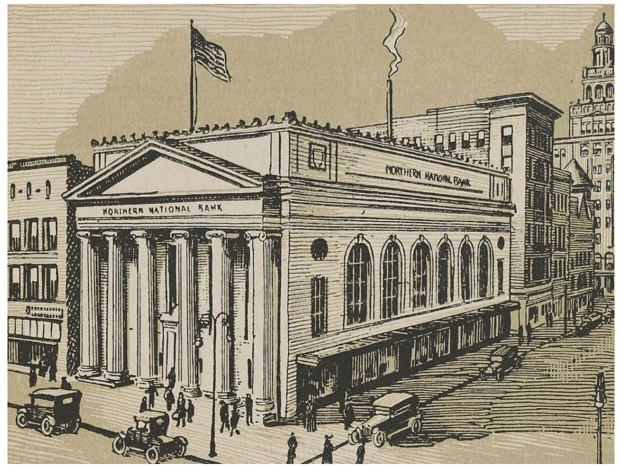
What is a depository?

A place to deposit money

Basic Question: Where can we keep our money?

- TX LGC Ch. 105
- Must keep money in the city depository, which includes:
  - National and State
    - Banks
    - Savings Associations
  - Credit Unions
- One or more



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Which funds must be kept in the depository?

- "Applies to the funds ... of any municipality or any department or agency of the municipality."
  - General funds
  - Utility funds and other separate accounts
  - Includes interest and sinking funds
  - Nearly anything you can think of…
- Independent entities responsible for own funds:
  - Economic development corporations
  - Crime control and prevention districts
  - Most independent entities are subject to depository law themselves

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Exception? What about civil asset forfeiture $?

- Forfeiture?
  - Seizure of assets used to further a specific crime or property that is connected to a crime in some way.
- Code Crim. Proc. § 59.06(c)(2) requires civil asset forfeiture money to be kept in a "special fund *in the municipal treasury*."
- Police chief has discretion over ***expenditures***- not banking.

Special Duties of a Municipal Depository

•The depository must:

–Provide security for funds no later than five days before commencement of the term of the contract. Loc. Gov't Code, § 105.031(a).

–Comply with the Public Funds Collateral Act (Subchapter B of Ch. 2257 of TX Gov't Code)

–Provide 100% security for deposit of public funds (ISDs get 110%!)

–Security can be provided/offset by FDIC or NCUA insurance

How do we know our money will be there?

- FDIC or NCUA insures up to $250,000
- Collateral security
  - Collateral can be securities or corporate surety bonds
  - City must adopt a policy defining adequate collateral
    - Type, valuation, substitution
  - Comptroller oversees depositories under Chapter 2257, receives reports

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Selecting the depository

The city must follow the procedures, but ultimately it is at the discretion of city council

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How do we choose a depository?

- **Request for Applications (“RFA”)**
  - City must request applications from depositories
  - City must publish notice of request for applications
  - Similar to RFP process.
- Application deadline is critical

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RFA: Designated Officer

- Treasurer or other officer so designated by city council
- Receives and reviews the applications
- Must prepare annual report outlining details of city accounts and funds

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RFA: Notice

- Designated officer gives notice of RFA
- The notice must contain:
  - Name and address of designated officer receiving applications
  - Date and time the applications are due
  - Date, time, and place council will consider the applications

(The usual stuff, really…)

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RFA: Notice Publication Requirements

- 21 days or more prior to the deadline
- In a newspaper of general circulation in the city (use official city paper)
  - Internet is not an alternative
- If city want applications from out-of-city depositories, must also publish in a financial publication of general circulation in the state

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Which depository can we pick?

- Council decision – Open Meetings Act
- Only timely applications may be considered
- Consider all factors, including price
- City may reject any or all applications
- Keep an eye on:
    - Depository Location
    - Council Conflicts

Location, Location, Location

Where is the Place of Business?

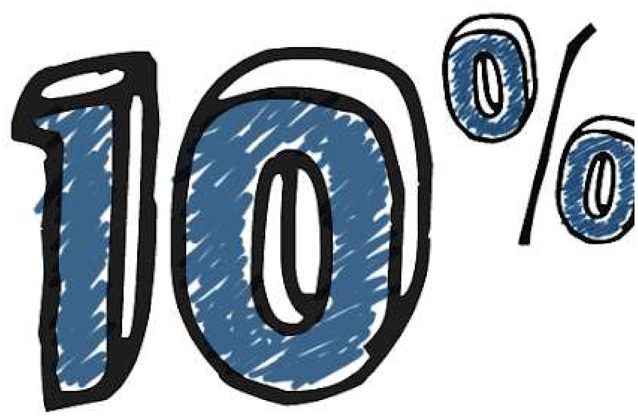
- In the city? Yes.
- Not in the city? Maybe
    1. City council has adopted a written policy allowing for out-of-city depository; and
    2. Place of business in Texas
- Credit unions must be **domiciled** in Texas

Conflict of Interest

- Special statute: Local Government Code Section 131.903
- Does a city official or employee have an interest in the depository?
  - If no, then no problem
  - If yes, does the individual have a duty to select the depository?

More Conflict of Interest

- 10% Rule
- The city **may not select** a depository in which an **official or employee** with a duty to select owns 10% or more of stock.
- Stricter than the standard city conflict rules of LGC Ch. 171
  - (Affidavit + Non-participation = Cured!)



Conflict of Interest, Finally

- The city may select a depository if employee/official with duty to select owns less than 10% of stock if:
  - Conflicted individual abstains from participation and files Chapter 171 affidavit;
  - The rest of council still votes to select depository; and
  - Charter or ordinance does not prohibit the selection

The Depository Contract

Certain provisions are required, and city council has broad authority to add other provisions

Timeline

- Council must record "by order in minutes" the entity selected as depository
- ***<u>Process is not over at depository selection!!</u>***

Timeline

- Not later than five days before the commencement of the contract, the depository must provide security.
- Not later than 60 days after the council designates the depository, the designated officer must transfer funds.
- So there is a clock ticking on negotiations.
- City can still get out of this

Depository Contract - Basics

✓Must be written

✓Contract term **may not exceed five years**

✓Contract may contain any provisions approved by city council

✓City council **<u>may contract for additional services</u>** (put additional services in RFA)

Depository Contract – Even More Stuff…

- Provisions requiring depository to:
  – Perform all duties under the contract;
  – Keep funds covered by the contract;
  – Provide security;
  – Pay on all checks drawn;
  – Pay all transfers; and
  – Account for all city funds

Energy & Firearms Sectors
Anti-Boycott

- Chapter 809, Government Code; Chapter 2274, Government Code
- **Affected Contracts and Vendors (From 2021 Legislature)**
  - Goods or ***Services*** contract with a value of $100,000 or more
  - Company with more than 10 full-time employees
- **Energy Sector:** Vendor must verify in the contract that vendor:
  - Vendor must verify in the contract that vendor does not boycott energy companies and will not boycott energy companies during contract.
- **Firearms Sector:**
  - Vendor must verify that they do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate during the term of the contract.
  - Exceptions: (a) contracts with a sole-source provider, or (b) no complying bids received.

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Signatories

- **City:**
  - Normal practice.
  - Designated Officer?
- **Depository**:
  - Financial Institution Resource and Recovery Enforcement Act (FIRREA) requires:
    - –President of bank board or loan committee to sign contract on behalf of depository;
    - –Contract must be entered into official depository records by resolution

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Breach of Contract

Failure to Provide Collateral:

•Contract can be cancelled and a new depository selected if collateral is not provided

- •Zero collateral – Automatic breach
- •80% collateral?? – Recommend cancellation.

Other breaches:

•Other breaches must be "material" to make the contract voidable

•Underline, **bold**, CAPITALIZE, increase font size if it's important to the city!

Miscellany: Payment of Checks

- City council may adopt procedures on how checks are paid
- If not, city must follow archaic "warrant system"

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Miscellany: Enforcement

Why the contract is so important:

- Conflict over depository breach must be brought as provided by the contract.
  - i.e., if you want to sue about it, it better be in the contract.
- Must be tried in the county where the city hall is located

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Compliance with Depository Laws

- Misdemeanor for conflict-of-interest violation
- Civil suit from taxpayer
- Audit headaches
- Bond rating issues

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2027 Legislative Session

- TLGC Chapter 105 has not been amended since **1993**
- No changes last session
- Changes on the Horizon??
  - Maybe newspaper notice could be simplified
- TML Legislative Services

Questions?

- TML Legal Department
  - 512-231-7400
  - legalinfo@tml.org
- My contact info
  - 512-231-7460
  - sarah@tml.org
- For further reading on depositories
  - Chapter 105, Loc. Gov't Code
  - Our legal Q&A on our website: tml.org: Policy>Legal Research>Legal Questions and Answers>Cities—Depositories
  - A sample depository contract: https://tmlpfia.org/wp-content/uploads/2019/06/Depository-Agreement-SAMPLE.pdf