conversion but only states "Consult Normal," could be used as a determining factor. The Board, in other respects, should consider the application, records, and qualifications in a manner consistent with prior actions on like applications, many of which have been determined by said Commission under said statute.

I am, therefore, of the opinion, the Teacher Training and Licensing Commission of the Indiana State Board of Education, under the above referred to statute, has the authority to consider said application on the foregoing conditions, and if it sees fit to do so, to grant a license on that basis.

OFFICIAL OPINION NO. 41

October 7, 1957

Mr. T. M. Hindman
State Examiner
State Board of Accounts
304 State House
Indianapolis, Indiana

Dear Mr. Hindman:

This is a sequel to 1956 O. A. G., page 175, No. 39, and in response to your Department's request for my further Official Opinion in clarification thereof, and in answer to the following questions:

"1. Assuming that 'Bank A' located in X Township of Y County has a branch bank located in Z Township of Y County and there is also another bank, designated as 'Bank B,' located and having its principal place of business in Z Township of Y County, do both of said banks qualify for the deposit of public funds of Z Township?

"2. If your answer to question (1) is in the affirmative, would the statutes require that both of said banks be designated as public depositories, provided both banks make application for the public funds of Z Township?"
"3. If your answer to questions (1) and (2) is in the affirmative, may the board of finance of Z Township apportion the public funds of said township under Section 61-639c, Burns' Indiana Statutes, between Banks A and B in the same proportion that the total resources of the branch of Bank A and Bank B (deposits of each bank within Z Township) bear to the total resources of both banks?"

I. Your first question is answered by reference to Section 14 (b) of the Depository Act of 1937, being the Acts of 1937, Ch. 3, Sec. 14 (b), as found in Burns' (1951 Repl.), Section 61-635 (b), the first sentence of which reads as follows:

"(b) Any bank or trust company may make and file a proposal to become a depository and receive public funds of the county in which its place of business is located or of any municipal corporation in which its place of business is located. * * *" (Our emphasis)

Section 1 (d) of the same Act, being the Acts of 1937, Ch. 3, Sec. 1 (d), as found in Burns' (1951 Repl.), Section 61-622 (d) defines the term "municipal corporation" to include "townships." Thus any bank or trust company may file a proposal to become a depository of public funds of any township in which its place of business is located.

Branch banks are authorized upon the theory and determination by the Department of Financial Institutions that "the public convenience and advantage will be subserved and promoted by the opening or establishment of a branch bank in the community in which it is proposed to establish such branch bank; * * *." [Acts of 1933, Ch. 40, Sec. 224, as amended, as found in Burns' (1957 Supp.), Section 18-1707.] The permission to so establish a branch bank is thus upon the representation of the parent bank that it will conduct business at the location of the branch. Both by legal and practical concepts, the location of the branch is a place of business of the parent bank.

Therefore, in answer to your first question, it is my opinion that, under the facts in said hypothetical question, "Bank A" and "Bank B" are each qualified to act as a depository of the
public funds of Z Township insofar as the place of business requirement of said Depository Act is concerned.

II. Your second question is answered by reference to Section 15 (a) of said Depository Act, being the Acts of 1937, Ch. 3, Sec. 15 (a), as found in Burns’ (1951 Repl.), Section 61-636 (a), which provides, in part:

“* * * any bank or trust company which has filed a proposal to receive on deposit public funds of the county in which its place of business is located, or of any municipal corporation in which its place of business is located and to provide security in accordance with the provisions of this act, shall be designated as a depository for such public funds.” (Our emphasis)

I know of no reason to construe the term “shall,” as used in the above-quoted statute, other than in its mandatory sense. Therefore, in answer to your second question, it is my opinion that, under the facts in said hypothetical question, the statute does require that “Bank A” and “Bank B” each be designated as depositories of the public funds of Z Township, provided both banks make the necessary application and provide the required security.

III. In determining my answer to your third question, reference is made to Section 18 (c) and (d) of the Depository Act, being the Acts of 1937, Ch. 3, Sec. 18 (c) and (d), as found in Burns’ (1951 Repl.), Section 61-639 (c) and (d) which provide as follows:

“(c) All public funds of all municipal corporations shall be deposited in depositories designated as depositories therefore in accordance with the terms of this act and if there be any, in depositories located in the respective territorial limits of the municipal corporations. Where two [2] or more depositories have been designated by a board of finance for one [1] fund or account, it shall require the local officer having charge of the fund or account to deposit and maintain the balance in each depository, as nearly as practicable, in the proportion that the total resources of each depository bears to the total resources of all depositories designated for the particular fund or account. The term ‘total resources'
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as used in this section and in section 14 [§ 61-635] hereof shall mean the total resources of the depository less an amount equal to all public funds on deposit in the depository.

“(d) The board of finance shall determine the proportions for the deposit of public funds for each biennial period on the basis of the total resources shown by the called reports of the depositories which are of dates nearest to the date on which depositories are designated. At the time of each called report the depositories shall file with the proper local officer and the board for depositories a copy of the statement required by law to be published and a statement of all public funds on deposit as of the date of the called report, each of which shall be certified as true and correct by a duly authorized officer of the depository. Local officers shall file these statements with the proper boards of finance and preserve them until new statements are filed by the depositories. Any depository may inspect and examine any statement filed by any other depository.” (Our emphasis)

An examination of the entire Depository Act leads me to believe that the above-quoted subsections of that law are of controlling materiality in resolving the issue posed by your question. Your specific query is whether the funds of Z Township may be apportioned “between Banks A and B in the same proportion that the total resources of the branch of Bank A and Bank B (deposits of each bank within Z Township) bear to the total resources of both banks?” The apportionment formula so suggested thus substitutes the element of “deposits of each bank within Z Township” as the numerator of each ratio instead of “total resources of each depository” as provided in the Act and presumably the denominator of each ratio would of necessity consist of the combined deposits of both banks within Z Township—whereas the Act provides that such denominator consist of “the total resources of all depositories designated for the particular fund.” In other words, the apportionment formula suggested by the third question injects the idea that the public funds of Z Township should be apportioned between the designated depositories according to the ratio that the volume of business conducted by each deposi-
tory within Z Township (based upon deposits within Z Township) bears to the combined volume of business conducted by both depositories within Z Township (based upon the combined deposits of both depositories within said Township).

As was stated in 1956 O. A. G., pages 175, 176, No. 39, the Depository Act defines the term "depository" to mean "banks or trust companies." See: Acts of 1937, Ch. 3, Sec. 1 (g) as found in Burns' (1951 Repl.), Section 61-622 (g). Said Opinion further emphasized that branch banks have no separate corporate existence—thus having no resources strictly of their own. Since the parent, not the branch, is the depository, the total resources of the parent, inclusive of resources located at all its branches, should be considered in apportioning funds. Thus, when Section 18 (c), Burns' 61-639 (c), supra, refers to "the total resources of each depository," the only permissible interpretation of such must be that the Legislature meant total resources, wherever located, of the designated and responsible corporate entity, i.e.—the bank or trust company—less, of course, "an amount equal to all public funds on deposit in the depository," as provided by the Act.

This concept of the Depository Act is supported by Section 18 (d) of that Act, Burns' 61-639 (d), supra, which requires depositories to file with the proper local officer and with the board for depositories "a copy of the statement required by law to be published." This has obvious reference to Sections 211 and 212 of "The Indiana Financial Institutions Act," being the Acts of 1933, Ch. 40, Secs. 211 and 212, as amended, as found in Burns' (1950 Repl.), Sections 18-1501 and 18-1502. Said sections of said banking law provide for the preparation, verification, submission and publication of statements of condition of banks and trust companies. Such statements are required to disclose the resources of the bank or trust company, excluding property and funds held in trust, but there is no requirement of that law or of the Department of Financial Institutions that either resources or deposits be allocated in the published statement of condition to a particular branch where either are located or received.
The Depository Act is designed to afford the means for the proper handling, accounting for and safeguarding of public funds and to provide for their availability when needed for the purposes for which their expenditure is authorized. Insofar as the responsibility of depositories for public funds is concerned, the Legislature has apparently adopted the standard of total resources or financial wealth of the depositories as the guide for apportioning the deposit of public funds of a municipal corporation among two or more eligible depositories, rather than the standard of business done or deposits received within the territorial boundaries of the municipal corporation whose funds the depositories propose to receive. Certainly, if liability for the loss of public funds were established against a depository, recovery thereon would not be confined to assets within the particular township whose funds were lost, but would include all assets of the parent bank or trust company subject to levy, irrespective of where located.

It may further be noted that while the cash account as reflected in a statement of condition of a depository would doubtless include moneys received as deposits, nevertheless the deposit account actually represents a liability of the depository to all of its depositors and is not really a resource or asset of such institution. The deposit account is, therefore, not necessarily a reliable indication of the financial stability of the depository.

From the foregoing, it follows, and it is my opinion that the apportionment formula suggested under the hypothetical facts contained in your third question is without any authority. Under such facts, the statute requires the application of the apportionment formula prescribed therein based upon "total resources" as therein defined.