the county of which he is an officer to designate one or more banks or trust companies located within the county, as the depository for any and all fees and funds received by such clerk by virtue of his office."

It will be noted the language of the last above quoted section requires a designation of a bank or trust company. This language is not as broad as that used in the Act covering the deposit of public funds. However, it is to be noted that building and loan associations are not included in either of the above designated classes.

Section 281 of the Financial Institution Act further provides that no building and loan associations shall engage in the banking or trust business or operate a savings bank, commercial bank or trust company. This same section further provides:

"No association shall advertise or hold itself out to the public as accepting deposits of money payable on demand, or without notice, or agreeing to pay, or guaranteeing the payment of any interest or fixed amount in dividends, upon deposits of money or upon any shares of its stock."

It is my opinion, therefore, that a building and loan association can not qualify as a public depository for funds in the hands of county clerks or for public funds of any kind.

ACCOUNTS, STATE BOARD OF: State Board for Depositories Public Funds. Money held in escrow from public funds.

March 28, 1938.

Mr. Ross Teckemeyer,
Secretary, State Board for Depositories,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in answer to your request for an opinion as to whether or not certain monies held in an escrow account are
public funds within the meaning of the State Depository Law. Your letter states:

"In auditing the reports received from the Indiana National Bank, a public depository for the Citizens Gas and Coke Utility, which is municipally owned, I find that an account of the utility known as the escrow account, is not included in the bank's reports of public funds on hand.

"Before proceeding further in attempting to have the account included in the monthly report of the Indiana National Bank, of public funds on hand, we submit the following question: Is it your opinion that the funds deposited in this account are public funds which should be included in the report of the Indiana National Bank and upon which the bank should pay the assessment provided for under chapter 3 of the Acts of 1937."

Enclosed with your letter is copy of the minutes of the Citizens Gas and Coke Company and of the Indianapolis Gas Company and of the escrow agreement, by the terms of which the money was to be put up in the Indiana National Bank. The bank advises that the amount held in escrow has been included in their monthly tax report of capital stock, surplus, undivided profits and deposits and that tax has been paid at the rate of one-fourth of one percent per annum.

By a written contract, dated March 2, 1936, made by the Indianapolis Gas Company and the Department of Utilities of the City of Indianapolis with respect to the use by the City of Indianapolis of certain property belonging to the Indianapolis Gas Company, the Department of Utilities agreed to pay certain sums to the Indianapolis Gas Company, and, also, to deposit in escrow with the Indiana National Bank a sum equal to the installments of interest on certain bonds and dividends on stock. The amount so deposited in escrow was to be held by the Indiana National Bank and disbursed or returned as required by the conditions set out in the contract. The pertinent provisions of the contract are as follows:

"The Department of Utilities of the City of Indianapolis will also deposit in escrow with the Indiana National Bank of Indianapolis, Indiana, during the continuance of this agreement, a sum equal to the semi-annual installments of interest on the presently out-
standing bonds of The Indianapolis Gas Company and a sum equal to the dividends on the presently outstanding stock of said company, said deposits to be made as and when the sums referred to shall become due in accordance with the terms of said lease, subject to the following conditions and agreements:

1st. That the amount so deposited shall be held by The Indiana National Bank at Indianapolis and shall be disbursed under the following conditions only:

(a) If a settlement of the presently existing controversy between The Indianapolis Gas Company and The Department of Utilities of the City of Indianapolis as to the validity of said lease dated September 30, 1913, and its binding force upon and as against the City of Indianapolis and this Department of Utilities of said city, or against any of the property acquired by said city or said department, from Citizens Gas Company of Indianapolis, is reached and an agreement of settlement is made, then in accordance with the agreement of the parties.

(b) In the event no settlement of such controversy is reached, then if it shall be finally determined in a litigated case that said lease of September 30, 1913, is a valid and binding obligation upon the City of Indianapolis and/or the Department of Utilities of said city or upon the property acquired by such city or department thereof from Citizens Gas Company of Indianapolis, the sum so deposited shall be delivered by the escrow to The Indianapolis Gas Company and shall be applied in the payment of the rent due under said lease.

(c) In the event of such litigation and a final determination that said lease of September 30, 1913, is not a valid and binding obligation on the City of Indianapolis or the Department of Utilities of said city or against any of the property of either there shall be first paid to The Indianapolis Gas Company out of said sum reasonable compensations for the use of the plant and property covered by said lease from July 1, 1936, to the date of such final adjudication, such compensation to be fixed by agreement of the parties or a decree of court, and then whatever remains shall be paid over
by said escrow to the order of said Department of Utilities of the City of Indianapolis."

It is further provided in the agreement that the deposit with the escrow is made without prejudice to the rights or position of the Department of Utilities, and that it may continue to operate the plant and equipment until the controversy is adjusted or terminated by decree of court.

This office, in an opinion dated May 6, 1937, ruled that the Department of Utilities of the City of Indianapolis was a public institution in that the money collected and disbursed by it was public funds. It appears from the agreement referred to above by the terms of which the bank accepted the money in escrow, that the money so held, may, in a certain event, be returned to the utility. There is no certainty that the funds would be turned over to the gas company or for its benefit.

The money so held in escrow was public money when it was collected and held by the Department of Utilities of the City of Indianapolis. I do not believe that the money changed its character at once when it was put up in a special escrow account in the bank.

There have been many instances where private parties have put up money in escrow, which, in the happening of some event, was to be turned over to the state in payment of taxes, or in settlement of some other state obligation. Such monies so held in escrow have been treated as non-public funds until the happening of the event which required its payment to the state because it was private money when put up in escrow. The reverse is true in the case of the funds deposited by the Department of Utilities.

It is my opinion that the money deposited by the Department of Utilities of the City of Indianapolis in the special escrow account, under the conditions stated in your letter, did not lose its character as public funds and it ought to be so regarded and reported by the bank.