

GENERAL COUNSEL OPINION

QUALIFICATION OF COURTS AND FIDUCIARY FUNDS FOR THE SAFE PROGRAM  
J. MICHAEL MANASCO

April 17, 2007

QUESTION

ARE COURTS QUALIFIED PUBLIC ENTITIES AND ARE DEPOSITS OF THEIR FUNDS, INCLUDING FIDUCIARY FUNDS, IN QUALIFIED PUBLIC DEPOSITORIES PUBLIC DEPOSITS THAT ARE SUBJECT TO THE SAFE PROGRAM OF ALABAMA?

CONCLUSION

Alabama Courts are specifically included and are not an exception to the numerous other specified entities that meet the statutory definition of the SAFE Act as a Covered Public Entity. The Court judges meet the SAFE statutory definition of a Covered Public Official. The court's funds when deposited in a qualified public depository are Public Deposits covered by the provisions of the SAFE Act.

ANALYSIS

The statutory provisions for SAFE are found in §§ 41-14A-1 through 41-14A-14, Code of Alabama (2001)

§ 41-14A-2 "Definitions" provides in pertinent part as follows:

"(4) COVERED PUBLIC ENTITY. The state and its political subdivisions, including its agencies, departments, boards, commissions, officers, public institutions of higher learning as defined in Section 16-5-1, and courts; counties, including the offices of their public officials, whether elected or appointed, and any of their agencies, departments, boards, school districts, commissions, and courts; municipalities, and any of their agencies, departments, boards, school districts, commissions, and courts; public corporations, including any public board, authority, or district, heretofore or hereafter organized or created in this state pursuant to authorization or determination of any municipality or municipalities or by any county or counties or the governing body of any one or more thereof and that receive any appropriations of funds by action of the Legislature of this state or any governing body of any political subdivision, municipality, or county of this state or that receive the proceeds of any tax levied pursuant to any statute of this state; any improvement authority incorporated under Chapter 7

of Title 39; any public corporation or instrumentality created under the statutes of this state enacted prior to January 1, 2001, that expressly provide that depositories of funds of such public corporation or instrumentality shall pledge collateral to secure the public corporation's or instrumentality's deposits; and any other public corporation created under statutes of this state enacted on or after January 1, 2001, that provide that the public corporation shall be subject to the provisions of this chapter." (Underlined emphasis added.)

(5) Covered public official. In the case of the State of Alabama, the State Treasurer or the State Treasurer's designee, and, in the case of each other covered public entity, the treasurer or other chief financial officer or Public official, or designee thereof, responsible for handling deposits of any funds of such covered public entity.

(17) Public deposit. The funds of any covered public entity or covered public official that are placed on deposit in a qualified public depository, including, but not limited to, time deposits accounts, demand deposit accounts, and certificates of deposit. All certificates of deposit, whether negotiable or nonnegotiable, shall be considered deposits and shall be subject to the provisions of this chapter. Funds held by a financial institution, on behalf of a covered public entity or covered public official in securities and other investment vehicles, including, but not limited to, bonds, notes, bills, warrants, common trust funds, money market mutual funds and other mutual funds, investment trusts, repurchase agreements, and reverse repurchase agreements and similar instruments are considered investments and are not public deposits as defined in this subdivision.

All courts in the state are part of the Alabama Unified Judicial System structure. This includes for the purposes of this opinion all 68 Probate Courts and the 258 Municipal Courts, along with the 67 District Courts and the 41 Circuit Courts to the Courts of Civil and Criminal appeals and the Supreme Court. (<http://alacourt.gov>)

The State Department of Examiners of Public Accounts concurs that all the courts are part of the judicial branch of state government; and that, with the exception of the municipal courts, the court officials are state officials and all the employees are state employees. The courts operate primarily from State General Fund appropriations. Probate Courts generate funds from various sources regarding sale of licenses, property taxes, administration of estates, and recording of documents. These funds are either held

in a fiduciary capacity by the court official or directed to the governmental general fund.

The Safe statutes are clear and unambiguous. There is no need for statutory construction when the meanings of the words are not in doubt. [State v. Dawson, 89 So.2d 103](#) Ala., 1956. [The] Court cannot evade plain terms of statute and place enforcement thereof in hands of expediency. [Jones v. Conway, 125 So.2d 517](#) Ala., 1960

/s/ J. Michael Manasco, General Counsel