

October 19, 2021

Monica Mezzapelle, Treasurer
State of New Hampshire
25 Capitol Street
Concord, NH 03301

Re: RSA 6:8.I-a(d)

- Authority of New Hampshire Banks to Accept Deposits of Vermont Public Funds

Dear Treasurer Mezzapelle:

This firm represents Passumpsic Savings Bank, d/b/a Passumpsic Bank, a Vermont chartered, FDIC-insured nonmember bank headquartered in St. Johnsbury, Vermont (“**Passumpsic**”), which maintains branch banking offices in Vermont and New Hampshire. Pursuant to RSA 6:8.I-a(d), we have been asked by Passumpsic to provide to you our opinion regarding whether, under the laws of the state of Vermont, a banking institution chartered under the laws of the state of New Hampshire (a “**NH Bank**”) would be permitted to accept public unit deposits in Vermont in substantially the same manner and subject to substantially the same terms and conditions as is permitted to a bank chartered under the laws of the state of Vermont (a “**VT Bank**”). For the reasons set forth below, we are of the opinion that Vermont law does permit a NH Bank to accept public unit deposits in Vermont in substantially the same manner and on substantially the same terms as a VT Bank.

In connection with this opinion letter, we have reviewed such Vermont and New Hampshire statutes and regulations and regulatory guidance as we deemed necessary or appropriate for the purposes of rendering the opinions expressed herein.

General Authority to Invest Vermont Public Funds. As discussed in more detail below, Vermont law does not prohibit or limit the investment of the funds of Vermont governmental units in the deposits of out-of-state banks, including NH Banks. Rather, the investment of such public funds is a prudential matter generally left to the discretion of the applicable public officer or governing body.

Vermont State Funds. Under 32 VSA §431(a), the Vermont State Treasurer and the Governor are authorized to select banks in which state funds may be deposited. Broad categories of permitted investments are specified in 32 VSA §433(a), including “certificates of deposit and other evidences of deposit at banks...approved by the Treasurer.” (32 VSA §431(a)(2)) Pursuant to these statutory authorities, the Vermont Treasurer has adopted general guidelines for short-term investment of state funds. Those guidelines do not distinguish between VT Banks

and out-of-state banks. (*State of Vermont Office of the State Treasurer Short-Term Investment Guidelines (Revised through May 2, 2011)*) In addition, the Vermont Treasurer has adopted a program known as "Bank in Vermont" pursuant to which approved banks may participate in monthly bids for the short-term deposit of blocks of state funds. Participation is limited to banks domiciled in Vermont or maintaining Vermont branches. This in-state branch requirement applicable to out-of-state banks is no more restrictive than the similar requirement in New Hampshire law, codified at RSA 6:8.I and II. Additional Bank in Vermont program criteria are specified for participating banks, but are facially neutral as between VT Banks and out-of-state banks.

Vermont County Funds. Although the county treasurer is required to account properly for county funds (24 VSA §213), there are no Vermont statutes specifying permitted investments for such funds.

Vermont Municipal Funds. Under 24 VSA §1571(b), the funds of Vermont towns are to be invested by the town treasurer with the approval of the legislative body (selectboard). There is no statute requiring the deposit of municipal funds in VT Banks, nor prohibiting the deposit of such funds in out-of-state banks. The Vermont League of Cities and Towns ("VLCT") has recommended that Vermont municipalities adopt investment guidelines as a best practice and has made available to municipalities sample guidelines. Many Vermont municipalities have adopted investment guidelines as a prudential matter. VLCT's sample guidelines specify permitted deposit products and other investments, but do not discriminate between VT Banks and out-of-state banks, and require only that the depository bank maintain banking offices in Vermont.

There are no statutes of general application specifying permitted investments for the funds of Vermont cities or incorporated villages, which generally operate under individual charters.

The trustees of public funds held for a restricted purpose (for example, charitable, educational or cemetery purposes) are authorized under 24 VSA §2432 to invest such funds in specified investments, including deposits in federally insured financial institutions as defined in 8 VSA §11101(32). That definition includes out-of-state federally insured banks.

Vermont Supervisory Union and School District Funds. The funds of supervisory unions are to be invested by the treasurer of the supervisory union, as directed by the supervisory union Board. (16 VSA 322(c)) Similarly, the funds of individual school districts are to be invested by the treasurer of the school district, with the approval of the board of school directors (16 VSA §426(c)). Neither statute prohibits investment of such funds in the deposits of out-of-state banks.

Based on the foregoing Vermont statutes and other authorities, we are of the opinion that NH Banks are permitted under Vermont law to accept for deposit funds of the State of Vermont and other governmental units within Vermont in substantially the same manner, and on substantially the same terms, as is permitted for VT Banks.

We understand that, in accordance with RSA 6:8.I-a(d), you will confirm receipt of this opinion letter within 60 days and will make a copy of it publicly available by posting on the New Hampshire Treasury Department's website. Please contact Denise Deschenes

(ddeschenes@primmer.com) or Eli Emerson (emerson@primmer.com) if you have any questions about this opinion letter or require additional information.

Very truly yours,

Primmer Piper Eggleston & Cramer PC

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Cc: Passumpsic Bank