

FILE

*Public Funds
Department Security*



Copy to

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

November 25, 1974

Opinion No. 74- 373

Mr. John E. Bremer, Attorney
Medicalodges, Inc.
P. O. Box 574
Coffeyville, Kansas 67337

Dear Mr. Bremer:

You inquire concerning the application of K.S.A. 9-1402 and 9-1603 to the investment of certain industrial revenue bond proceeds. The investment of the proceeds in question is governed by two agreements, the first being one prohibiting disbursements until resolution of a zoning question, and the second being found in Ordinance No. 1199 of the City of Gardner, to take effect upon resolution of the zoning question.

The first agreement permits investment of funds in certificates of deposit "secured in the same manner as required by statute for the deposit of city funds...." Section 13 of the ordinance also permits investment of funds in certificates of deposit, but is silent as to any security or pledging requirement. You advise that while the first agreement has been in force, funds have been invested in a certificate of deposit secured by a pledge of government securities in an amount equal to 100% of the amount of the certificate, this pledge being given at the request of the fiscal agent-trustee, a Kansas banking corporation.

You advise that the first agreement is about to expire, and that a question has been raised as to what pledge of security the trustee is required to obtain if the funds are again invested in certificates of deposit. The fiscal agent-trustee contends, you state, that bank examiners require a 100% pledge of security. The lessee of the building to be built with the bond proceeds contends that the applicable pledging requirements are those set out in K.S.A. 9-1402, and that the only statutory requirement of 100% which is arguably applicable is that in K.S.A. 9-1603 which applies only when and as the funds are invested in certificates of deposit of the trustee bank.

John E. Bremer
November 25, 1974
page two

K.S.A. 9-1402 states in pertinent part:

"Before any deposit of public moneys or funds shall be made by any municipal or quasi-municipal corporation with any state or national bank or trust company, such municipal or quasi-municipal corporation shall obtain security for such deposit in one of the following manners.

* * *

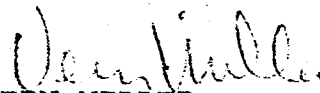
"Any state or national bank or trust company may deposit and maintain for the benefit of the governing body of the municipal or quasi-municipal corporation in the manner as hereinafter provided in this act securities in the amount of seventy percent of the total deposits at any given time...."

It goes on to provide that bonds issued under K.S.A. 12-1740 through 12-1749 may not be used to secure such deposits. K.S.A. 9-1603 states in pertinent part thus:

"As soon as any bank shall exercise any trust authority it shall segregate all assets held in any fiduciary capacity.... Funds held by such bank in trust less the amount of insurance carried in the federal deposit insurance corporation shall be carried in a separate account and shall not be used by the bank in the trust department, United States bonds or other securities approved by the commissioner in an equal sum."

This provision applies only, as the prospective lessee contends, to the pledging requirement for funds invested in certificates of deposit of the trustee bank itself. If funds are placed with another depository, as through investment in a certificate of deposit issued by other than the trustee bank, we find no basis for any greater pledging requirement than the seventy percent set forth by K.S.A. 9-K.S.A. 9-1402, supra.

Yours very truly,


VERN MILLER
Attorney General

VM:JRM:tp
cc: Carl O'Leary, State Bank Commissioner