



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 5, 1975

Opinion No. 75- 41

Mr. Matthew J. Dowd
County Counselor
Board of Commissioners
Shawnee County Courthouse
Topeka, Kansas 66603

Dear Mr. Dowd:

You advise that it has been proposed to authorize the clerk of the Shawnee County District Court to establish and maintain a bank account for funds deposited with the clerk, separate and apart from the county treasury.

K.S.A. 28-170 prescribes the fees to be charged by the clerk for certain services set forth therein. Concerning the disposition of these fees, this provision states thus:

"All fees charged in accordance with this section, other than in naturalization cases and passports, or any money received for any services performed which may be required by law, shall when collected be paid into the county treasury and become a portion of the general fund of the county; and it is also made the duty of said clerk at the expiration of his term of office to pay into the county treasury all of the fees which remain in his hands at such time, and which by law should be paid into the county treasury, and shall pay to his successor all fees and funds belonging to other parties which may be in his custody as clerk." [Emphasis supplied.]

Inferentially, those fees and funds belonging to other parties which are in the custody of the district court clerk are not deposited in the county treasury. All other fees received by the clerk for services performed according to statute and in the

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course of the official duties of the office are required to be placed in the county treasury, except, of course, where expressly provided otherwise. For example, the balance of the docket fee taxed as costs in criminal proceedings pursuant to K.S.A. 28-172a, after all statutory charges are paid therefrom, "shall be paid to the county general fund for reimbursement for the services of the clerk and sheriff." Similarly, the balance of the docket fee in civil cases remaining after statutory charges are deducted therefrom, pursuant to K.S.A. 60-2001(c), "shall be paid to the county treasurer for services of the clerk and sheriff."

The monies proposed to be deposited in the account in question here are not derived from fees and the like, which must go to the general fund, but comprise monies deposited with the court for payment of judgments, and otherwise, usually awaiting payment over to third parties. There appears to be no statutory provision whatever for the keeping of funds so deposited with the court. No statute expressly or inferentially requires that such monies be placed with the county treasurer. Indeed, that portion of K.S.A. 28-170 underscored above suggests impliedly that such monies remain in the custody of the district court clerk, and not of the treasurer. In the face of the statutory silence on the point, we cannot but conclude that there exists in the clerk of the district court inherent authority, vested by virtue of the duties of the office, as an officer of the court, and as a trustee of funds deposited therewith, to provide a suitable depository for such funds, which may be a separate bank account arranged and provided by the clerk.

The question remains concerning authority to invest monies so deposited. For counties declared to be an urban area, K.S.A. 20-628 states thus:

"The clerk of the district court . . . , with the approval of the administrative judge of such county, is hereby authorized and empowered to invest any moneys on deposit in the district court account, which are not immediately required for the purposes for which the moneys were collected or received, in (a) time deposits, open accounts, or certificates of deposit, for periods not to exceed six (6) months, in commercial banks or trust companies located in such county, except

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that such amounts invested may not exceed the amount insured by the United States government; or (b) United States treasury bills or notes with maturities not to exceed six (6) months. Interest received from the investment of such moneys shall be paid to the county treasurer of such county who shall deposit the same in the county general fund."

This statute is not uniformly applicable to all counties. The question is presented whether similar or other investment authority may be supplied by action of the board of county commissioners in the exercise of home rule powers conferred under K.S.A. 19-101a, or whether any authority, statutory or by county resolution, is needed to authorize such investments. K.S.A. 19-101a(a) commences thus:

"Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties; . . . third, counties shall have no power under this section to affect the courts located therein. . . ."
[Emphasis supplied.]

In the first instance, it is our view that the authority to invest moneys deposited with the clerk cannot be implied from the authority to accept such deposits and create an account therefor. Some express authority is necessary to entitle the clerk to invest the moneys in question. There being no express or implied statutory authority, the question arises whether it may be supplied by adoption of a charter resolution under the authority quoted above. Whether a charter resolution granting such authority would "affect the courts" is, at the outset, unclear. This particular restriction on the exercise of county home rule powers is phrased with such ambiguity and generality that it is difficult to describe with any precision the limits resulting therefrom.

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If, by charter resolution, there were adopted a provision similar, e.g., to K.S.A. 20-628, which authorizes the clerk to invest monies in certain forms of investment with the approval of the administrative judge, such a provision would clearly affect the court. Certainly, the task of authorizing investments may not seem burdensome or onerous, and would not affect the court adversely in any fashion. K.S.A. 19-101(a), third, however, prohibits the exercise of county home rule power in any fashion which would "affect" the courts not merely adversely, but in any way whatever. The monies proposed to be invested are those, for the most part, which are deemed to be in custodia legis. The clerk has the custody of these funds only in his or her capacity as an officer of the court. A charter resolution authorizing investment of such monies would, in our opinion, "affect the courts," for it would affect the duties of an officer of the court which were performed in precisely that capacity, i.e., as an officer of the court.

We would point out that K.S.A. 12-1678a authorizes the investment of certain funds thus:

"The board of county commissioners of any county having a population of more than one hundred thousand (100,000) and not more than one hundred eighty thousand (180,000) may invest any moneys of any political or taxing subdivision remaining in the hands of the county treasurer and not immediately required for the purpose for which such moneys were collected or received." [Emphasis supplied]

The monies in question here are not monies of any political or taxing subdivision, but monies of litigants before the Shawnee County District Court. A political or taxing subdivision might, of course, be such a litigant, and may be or be found to be entitled to certain sums of money paid in to court in particular cases. However, such monies, if deposited by the clerk of the District Court in a bank account as we have concluded may be done, are not monies "remaining in the hands of the county treasurer" the investment of which is authorized under this section.

Accordingly, we conclude, first, that it is within the authority of the clerk of the district court to establish a separate bank account for the deposit of such moneys as are not required to be

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deposited with the county treasury, and secondly, that there exists no authority, either by statute or by county charter resolution, to authorize investment of monies so deposited.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj