



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider,
Attorney General

December 1, 1975

ATTORNEY GENERAL OPINION NO. 75- 448

Mr. Charles E. Wetzler
City Attorney of Prairie Village
7700 Mission Road
Prairie Village, Kansas 66208

Re: Cities--Public Funds--Investment

Synopsis: The maintenance of a checking account with a limited balance, and provision for transfer of funds thereto from a savings account for payment of checks presented therefor, pursuant to an agreement between a city and its depository bank, violates no Kansas law regarding the holding and management of municipal funds.

* * *

Dear Mr. Wetzler:

You inquire concerning a proposed change in the manner in which the City of Prairie Village holds and manages its bank accounts. Under the proposal, three separate checking accounts would be utilized. The general account would have a minimum balance, or "checking floor," of \$5,000. Two other checking accounts, federal revenue sharing and bond and interest accounts, would each have a zero checking balance. Under the proposal, all deposits in the general account which would increase the general account above the \$5,000 checking floor would automatically be transferred to a savings account. When checks were drawn by the City which would reduce the balance below this minimum, the necessary funds would be transferred from the savings account to the general account after first receiving telephone approval from persons designated and authorized by the City. All deposits in the revenue sharing and bond and interest checking accounts

Mr. Charles E. Wetzler
Page Two
December 1, 1975

would similarly be transferred to savings accounts to preserve the zero checking balance, and checks drawn thereon would be covered by transfers authorized as described above.

You inquire whether under existing law, the City may transfer its funds in the manner described above. K.S.A. 1974 Supp. 12-1675, as amended, grants specific statutory authority for particular investments of "any moneys not immediately required for the purposes for which the moneys were collected or received." The proposal does not contemplate the investment of idle funds within the meaning of this statute. Deposits exceeding the "checking floor" of \$5,000 are not "idle funds," or "moneys not immediately required for the purposes for which the moneys were collected or received," for moneys proposed to be held in the savings accounts are subject to transfer at will to the checking accounts to meet demands thereon. In effect, the proposal contemplates the investment in savings accounts of all moneys deposited in the general account which increase the balance beyond the \$5,000 "checking floor," not because these moneys are not immediately required for use by the city, but merely because the fixed checking balance has been exceeded. The *effect* of the transfer to the savings accounts is, of course, to invest the moneys so transferred in interest-bearing accounts, but not because such transferred moneys are "not immediately required for the purposes for which the moneys were collected or received"

Even if, however, the moneys so transferred to the savings accounts were held to be idle funds within the investment authority of K.S.A. 1974 Supp. 12-1675 as amended, the enumeration of investments therein does not exhaust city investment authority. That section specifies that "[t]he provisions of this act shall not be construed to restrict city investment authority except as to interest rates received on time deposit, open accounts and certificates of deposit," these being those time deposit, open accounts and certificates of deposit specifically authorized by that section:

"time deposit, open accounts for periods of not less than thirty (30) days, or certificates of deposit for periods of not less than ninety (90) days and not exceeding six (6) months."

The savings accounts contemplated under the proposal would not fall within the foregoing specification. Thus, there exists no prohibition under the statutes regarding the investment of public funds of the municipality which would prohibit implementation of the proposal.

Mr. Charles E. Wetzler

Page Three

December 1, 1975

Concerning depositories of public moneys, insofar as pertinent herein, K.S.A. 1974 Supp. 9-1401 requires only that depositories of municipal funds be state or national bank and trust companies.

You inquire, also whether implementation of the proposal would affect compliance with the cash-basis law. K.S.A. 1974 Supp. 10-1116 prohibits creation or payment of any indebtedness which is "in excess of the amount of funds actually on hand in the treasury of such municipality at the time for such purpose" Monies held in the savings account or accounts contemplated under the proposal remain part of the municipal treasury, and are "actually on hand" for the payment of any indebtedness properly chargeable to the city general account or any of the other checking accounts opened under the proposal.

You ask whether use of the plan would violate any prohibitions against borrowing which apply to Kansas cities. Implementation of the plan does not appear to entail the creation of any indebtedness, and thus raises no question, in my judgment of a violation of any of such statutes.

Lastly, you ask whether criminal statutes may be violated when a check is drawn on a general account which does not have sufficient funds to cover the check, although the bank has specific authority to make a transfer from the savings account to the checking account to cover the check. K.S.A. 21-3707 defines the offense thus:

"(1) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft as aforesaid, that the maker or drawer has no deposit in or credits with such bank or depository or has not sufficient funds in, or credits with, such bank or depository for the payment of such check, order or draft in full upon its presentation."

The issuance of a worthless check must be done both "with intent to defraud" and with knowledge at the time of making, drawing, issuance or delivery of such check that there are insufficient

Mr. Charles E. Wetzler
Page Four
December 1, 1975

funds on deposit for the payment of said check. Under the proposal, the bank and the city agree that when any check is presented for payment which would reduce the checking account to an amount below the "checking floor," the bank would not reject the check for insufficient funds, but would telephone the designated city official or officials for approval to transfer the necessary funds from the savings to the checking account to cover payment of the checks thus presented. In the face of such an agreement, the city, or its officials responsible for the payment of city funds, could not reasonably be chargeable with knowledge that at the time any particular check was drawn or presented for payment, there would be insufficient funds in said account to cover the check so presented. Indeed, in the face of such an agreement, they could be chargeable only with knowledge that there would in fact be sufficient funds on hand or transferred into the checking account to cover checks presented for payment.

On the basis of the foregoing, and a review of pertinent statutes, I find no basis in existing state law upon which to question the legality of the holding and management of city funds as described above. I have not reviewed any regulations of the Federal Reserve System to consider their applicability, and any question concerning any such regulation must be addressed to the appropriate federal authorities.

I regret the delay in responding to your inquiry, but hope that this letter will be timely and helpful to you and the city governing body.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj