



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 15, 1975

ATTORNEY GENERAL OPINION NO. 75-459

Mr. Philip E. Winter
Assistant County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: Counties--Public Funds--Investment--Interest

Synopsis: Interest earned on county funds which are invested in investments specifically enumerated in K.S.A. 1974 Supp. 12-1675 as amended must be credited to the general fund. Interest earned on county funds invested in investments not specifically enumerated in K.S.A. 1974 Supp. 12-1675 as amended, but which are made pursuant to supplemental authority provided by county resolution, may be credited to any fund as provided by county resolution, which need not be a charter resolution.

* * *

Dear Mr. Winter:

K.S.A. 1974 Supp. 12-1677, as amended by ch. 68, § 2, L. 1975, provides in pertinent part as follows:

"(a) Except as otherwise required by state or federal law, all moneys earned and collected from investments by counties, area vocational-technical schools and quasi-municipal corporations authorized in this act shall be credited to the general fund of such county"

Mr. Philip E. Winter
Page Two
December 15, 1975

You inquire whether, in the exercise of county home rule powers under K.S.A. 19-101a, the county may by charter resolution exempt itself from the requirement of this statute that all interest earned on county funds invested under K.S.A. 1974 Supp. 12-1675 *et seq.* as amended, be credited to the general fund, and provide instead that, upon the adoption of an ordinary resolution by the board of county commissioners, that "such monies collected and earned from such investments shall be credited to the fund from which the monies were originally deposited" Thus, for example, interest earned on monies invested from the building fund could be credited directly back to the building fund, rather than to the general fund.

K.S.A. 1974 Supp. 12-1677 is applicable uniformly to all counties, and is drawn in mandatory, rather than permissive, language. Thus, except as otherwise provided by state or federal law, all interest earned on investments of county funds made pursuant to the authority of K.S.A. 1974 Supp. 12-1675 *et seq.*, as amended, must be credited directly to the general fund, and no contrary provision may be made by either charter or ordinary resolution.

However, the direction of K.S.A. 1974 Supp. 12-1677 as amended, as to the crediting of interest does not apply to interest earned on investments which are made of county funds *not* pursuant to K.S.A. 1974 Supp. 12-1675 *et seq.* as amended, but pursuant to its county home rule powers. I enclose a copy of Opinion No. 75-388, which concludes that although K.S.A. 1974 Supp. 12-1675 provides statutory investment authority for counties, counties may supplement that statutory investment authority by adoption of resolutions providing for additional investment authority. Thus, whereas the cited statutes authorize counties to invest in certificates of deposit, for example, for periods of not less than 90 days and not exceeding six months, the county may by resolution provide additional and supplemental investment authority for the investment of idle funds in certificates of deposit for periods of less than 90 days and for periods exceeding six months. A resolution providing such authority need not be a charter resolution, because it does not exempt the county from any existing statute, but merely supplements existing authority. If the county provides by resolution for the investment of idle funds in investments in addition to those enumerated in K.S.A. 1974 Supp. 12-1675 as amended, the interest earned on those investments would not be subject to the crediting requirements of K.S.A. 1974 Supp. 12-1677 as amended, because the latter statute applies only to interest on investments authorized by statute, *i.e.*, those which are "authorized in this act," meaning K.S.A. 1974 Supp. 12-1675 *et seq.* Thus, if the county authorizes investment of idle funds in other investments than those specifically enumerated in K.S.A. 1974 Supp.

Mr. Philip E. Winter
Page Three
December 15, 1975

12-1675 as amended, the interest on such additional investments may be credited as provided by county resolution, such as proposed in the resolution which you enclose.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure