



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

March 23, 1976

ATTORNEY GENERAL OPINION NO. 76- 100

The Honorable Joan Finney  
State Treasurer  
535 Kansas Avenue  
Topeka, Kansas 66603

Re: Roads and Bridges--State Freeway Construction Fund--  
Pooled Money Investment Board

Synopsis: The Pooled Money Investment Board is lawfully empowered via K.S.A. 1975 Supp. 68-2311 to invest the moneys of the state freeway construction fund. Said statute is neither defective nor constitutionally infirm.

\* \* \*

Dear Mrs. Finney:

You have requested an opinion from this office inquiring whether the Pooled Money Investment Board (PMIB) is empowered with the lawful authority to invest the moneys of the state freeway construction fund now and when additional amounts are added with the sale of future bond issues of the State Department of Transportation.

The state freeway construction fund consists of the proceeds from bonds issued pursuant to K.S.A. 1975 Supp. 68-2304. The management and investment of this fund is governed by the provisions of K.S.A. 1975 Supp. 68-2311 which in pertinent part provide:

"(a) All moneys received pursuant to the authority of this act, [Chapter 252, Laws of 1972] whether as proceeds from the sale of bonds or as payments from the state freeway fund, shall be deemed to be trust funds to be held and applied solely as provided in this

act. The secretary of transportation shall have the responsibility for the management of the state freeway fund and the state freeway construction fund. Within the limitations hereinafter provided, *the pooled money investment board shall have the authority to invest and reinvest moneys in the funds and to acquire, retain, manage, including the exercise of any voting rights, and dispose of investments of the funds,* except that moneys in the state freeway construction fund may be invested only in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America or in interest bearing time deposits in any commercial bank or trust company located in Kansas, or, if the board determines that it is impossible to deposit such moneys in such time deposits, in repurchase agreements of less than thirty (30) days' duration with a Kansas bank for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof.

\* \* \*

(b) Subject to the standards, objectives, and restrictions set forth in subsection (a), *the pooled money investment board shall formulate policies for the investment and reinvestment of moneys in the state freeway fund and the state freeway construction fund and the acquisition, retention, management and disposition of investments of these funds. From time to time, the pooled money investment board shall review any policies so adopted and make such changes therein as it deems necessary.* [Emphasis added.]

The foregoing reflects an amendment (Chapter 404, Laws of 1975) to the original act which essentially entails the transfer of the investment authority over the state freeway construction fund from the Department of Transportation to the PMIB. That this was the obvious intent of the legislature is evidenced by the simple and unambiguous language of the act (Emphasized, *supra*). Thus the single issue here presented is whether Senate Bill 54 (Chapter 404, Laws of 1975) as duly enacted by the Legislature and signed into law by the Governor is defective and therefore unconstitutional.

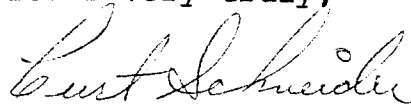
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We have carefully examined the provisions of Senate Bill 54 and the circumstances surrounding its passage. We are unable to ascertain any defects which could provide the basis for concluding that the statute is unconstitutional. It has been suggested, however, that the net operative effect of the statute will in some way affect detrimentally the rights of the bondholders which would be tantamount to a violation of the provisions of the United States Constitution, Article One, Section Ten. This argument is without substance.

Article 1, § 10 of the U.S. Constitution provides that no state shall pass any law impairing the obligation of contracts. Senate Bill 54 in no way affects the contractual obligations identified in the original bond resolution employed for the state highway bond issues. Bondholders in the event of a default have specific redress under the bond resolution, which, of course, does not provide security via the state freeway construction fund. The reason for this is that this fund consists of the proceeds from the sale of the bonds; it is not created by the resolution, but rather by statute and is separate and apart from the funds designed to protect the bondholders. The bondholders can not now nor could they under the original enactment seek satisfaction from that fund.

Accordingly it is the opinion of this office that Chapter 404, Laws of 1975 is not constitutionally infirm. It is a valid legislative enactment lawfully empowering the PMIB with the authority to invest the monies of the state freeway construction fund as specifically provided therein.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

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