



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 23, 1977

ATTORNEY GENERAL OPINION NO. 77-169

Mr. Edwin A. Rensmeyer
Municipal Accounting Section
Department of Administration
11th Floor - State Office Building
Topeka, Kansas 66612

Re: Public Funds--Board of Education--Security

Synopsis: Monies of a supplemental retirement system created pursuant to K.S.A. 1976 Supp. 72-17,108 are required to be secured as provided in K.S.A. 9-1402.

* * *

Dear Mr. Rensmeyer:

You inquire concerning the security requirements which are applicable to annuity trust funds of U.S.D. 259. This fund is authorized by K.S.A. 1976 Supp. 72-17,108, which commences thus:

"The board of any unified district having a population of more than two hundred twenty-five thousand (225,000) is authorized and empowered to establish by resolution a supplemental retirement system for employees of such unified district"

Subsection (c) of this section states thus:

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"The board of education is hereby authorized to invest any moneys derived from the salary tax and not currently needed as provided in section 8 [72-17,125], and may be invested in shares or accounts in savings and loan associations insured by the federal saving and loan insurance corporation, or other federal agency, to the extent covered by such insurance."

In addition, K.S.A. 1976 Supp. 72-17,125 elaborates upon the investment authority of the board respecting this fund. If the balance exceeds \$50,000, under subparagraph (a), the board

"may invest and reinvest moneys in the retirement fund . . . and . . . acquire, retain, manage, including the exercise of any voting rights, and dispose of investments of such fund in accordance with this subsection and sections 9 to 14 [72-17,126 to 72-17,131], inclusive. In [so doing] . . . , there shall be exercised the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, there may be acquired, retained, managed and disposed of as investments of the funds every kind of investment which men of prudence, discretion and intelligence acquire, retain, manage and dispose of for their own account, with the objective of all such investments being to make the money in such fund as productive as possible."

On the other hand if the balance is \$50,000 or less, the board has somewhat more restricted investment authority under subparagraph (b), which permits investment only

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"in direct obligations of, or obligations the principal of which and interest on which are unconditionally guaranteed by, the United States of America, or in time deposit open accounts in any bank or trust company located in Kansas, except that the amount so invested in a bank or trust company shall be secured in the manner prescribed by subsections (a) to (e), inclusive."

Under K.S.A. 1976 Supp. 72-17,127, the board may employ financial advisors to perform the investment functions vested in the board by K.S.A. 1976 Supp. 72-17,125.

Investments under subsection (b) are subject to the security requirements of K.S.A. 1976 Supp. 75-4218, subsections (e) and (f) of which require the deposit of securities in an amount equal to seventy percent of the value of active accounts, time deposit, open accounts, inactive accounts, fee agency and custodial accounts, and certificates of deposit. If the balance in the retirement fund exceeds \$50,000, there appears to be no statutory security requirement.

However, it is important to distinguish between security for investments of the fund, and security for the fund itself. K.S.A. 1976 Supp. 72-17,129 provides for custody of the fund thus:

"Except as provided in section 10 [72-17,127] and this section the custody of money and securities of each retirement fund shall remain in the custody of the respective school district treasurer, except that each board of education may arrange for the custody of such money and securities as it considers advisable with a member bank or trust company of the federal reserve system in the state of Kansas to be held in safekeeping by the bank or trust company for the collection of the principal and interest or other income or of the proceeds of sale."

I understand that the bank which serves as the depository of the boards general funds also serves as custodian of the retirement fund. The custodian of the fund under K.S.A. 1976 Supp. 72-17,129 must secure those funds in the same fashion as the custodian of any other monies of the board, in accordance with K.S.A. 9-1402.

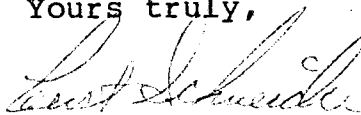
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You enclose an opinion of counsel for the board dated April 29, 1977, concluding that provisions in article 17, chapter 72, K.S.A., took precedence over article 9. While K.S.A. 1976 Supp. 72-17,125 deals specifically with security requirements for investments made from retirement funds having a balance of \$50,000 or less, it is silent respecting investments of monies from funds having a greater balance, and it is likewise silent respecting the security required of the custodian of the fund, whatever its balance, in the first instance. I find nothing whatever in art. 17, ch. 72, K.S.A., which would exempt retirement fund monies thereunder from the general security requirement of K.S.A. 9-1402, which applies to "any deposit of public moneys or funds . . . by any municipal or quasi-municipal corporation with any state or national bank or trust company" [Emphasis supplied.]

The question remains, whether, because the custodian of the board's general funds is also the custodian of the retirement fund, the bank may furnish pooled collateral security for both accounts, or whether it must furnish independent collateral security for the retirement fund. Neither chapter 9, article 14, nor chapter 72, article 17, K.S.A. furnishes definitive guidance on this point. Certainly, the securities furnished by the bank must equal in value at least seventy percent of the total of the board's general fund and the retirement fund. Collateral pledged by the bank as depository for the board's general funds may possibly not be regarded as applicable to the retirement fund of which it is custodian unless the pledged collateral is specifically pledged by the bank to secure both funds. In my judgment, at the very least, the terms of the security should specifically provide that the security applies both to the board's general funds and the retirement fund. It is probably more desirable, but I cannot conclude that it is statutorily required, that independent collateral be pledged for the retirement fund.

If further questions arise, please do not hesitate to contact us.

Yours truly,



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