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ATTORNEY GENERAL OPINION NO. 80- 131

The Honorable Patrick J. Hurley  
Secretary of Administration  
Room 263-E  
State Capitol  
Topeka, Kansas 66612

Re: Banks and Banking--Deposit of Public Moneys--  
Security for Partially Insured Deposits

Synopsis: The provisions of K.S.A. 9-1407 exempt from the requirements of K.S.A. 1979 Supp. 9-1402, that securities be provided on local public funds deposits, only that portion of any such deposit that is insured by the Federal Deposit Insurance Corporation. To determine the amount of such deposit for which securities must be provided by the depository bank, the amount of FDIC insurance coverage of such deposit is subtracted from the total amount of the deposit. Cited herein: K.S.A. 1979 Supp. 9-1402, K.S.A. 9-1407.

\* \* \*

Dear Secretary Hurley:

You indicate that independent auditors have advised the Division of Accounts and Reports of the State Department of Administration that a question has arisen as to the proper application of K.S.A. 9-1407, which reads as follows:

"That portion of any deposit of public moneys or funds which is insured by the federal deposit insurance corporation, or its successor, need not be secured as provided in this act."

The legislative act referred to in this statute is Chapter 102 of the 1947 Session Laws of Kansas, which was the initial enactment of the present Kansas banking code. Section 64 thereof, which has

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been amended on several occasions subsequent to its original enactment and is now codified at K.S.A. 1979 Supp. 9-1402, prescribes the amount and type of security to be provided by a state or national bank or trust company for deposits of public moneys or funds by any municipal or quasi-municipal corporation in the State of Kansas. We recently had occasion to construe the requirements of 9-1402 in Attorney General Opinion No. 80-35, where we concluded that, with one exception, this statute requires that, where securities are deposited and maintained for the benefit of the municipality as security for the deposit of public moneys or funds, such deposits are to be secured in the amount of 70% of such deposits. Thus, the provisions of K.S.A. 9-1407, quoted above, have relevance in determining the amount of the securities required for deposits under 9-1402, in light of the fact that at least a portion of each such deposit is insured by FDIC.

You note that, historically, when the provisions of 9-1407 have been applied to the requirements of 9-1402, the amount of the securities required for partially insured deposits of public moneys has been computed by subtracting the amount of FDIC coverage from the amount of the deposit and multiplying the difference by 70%. However, as an apparent result of the wording of a recent bulletin of the Kansas Bankers Association regarding local public funds deposits, you have been advised that some Kansas banks now may be using a different formula. Under the "new formula" the amount of the required securities is computed by multiplying the amount of the deposit by 70% and then subtracting the amount insured by FDIC.

As you have noted, the amount of securities which would be pledged by a bank under the "new formula" is significantly less than the amount derived by the historically accepted method of computation. Using the example included in your letter, the amount of the securities required on a deposit of \$200,000 using the historical computation is \$70,000, while the new approach would require only \$40,000 of securities. The latter method of computation obviously leaves a local governmental entity's deposits secured to a much lesser extent than has been the case previously under the traditional method of computation.

We have examined the KBA bulletin in question and, while we recognize that the explanation therein as to the amount of securities required for local public funds deposits might be interpreted so as to suggest the use of the "new formula," we do not believe such was the intent of the authors of that bulletin. Irrespective of KBA's bulletin, though, it is abundantly clear to us that the pertinent statutes are not susceptible of such interpretation.

There can be no question that 9-1402 and 9-1407 are statutes in pari materia and, as such, are to be construed together with a view toward reconciling and bringing them into workable harmony,

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if reasonably possible to do so. Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973). On the one hand, 9-1402 requires that a depository bank must provide "securities in the amount of seventy percent (70%) of the total deposits" (emphasis added); on the other, 9-1407 clearly exempts from these requirements the FDIC insured portion of any such deposit. In our judgment, construing these statutes together reveals a legislative intent that only the uninsured portion of a deposit of public moneys is to be secured in accordance with K.S.A. 1979 Supp. 9-1402. Therefore, to determine the amount of a public funds deposit that is subject to the security requirements of 9-1402, the amount of FDIC coverage must first be subtracted from the total amount of deposited moneys.

It is to be noted that, while K.S.A. 9-1407 clearly exempts from the security requirements of 9-1402 only that portion of a deposit that is FDIC insured, the "new formula" would exempt significantly more than the insured amount from such security requirements. Again using your example of a \$200,000 deposit for illustration, \$100,000 thereof is FDIC insured and, by virtue of 9-1407, that is the "portion" of the deposit that is exempt from the security requirements of 9-1402. Thus, pursuant to the latter statute, securities must be provided for the balance of the deposit (\$100,000) in an amount equal to 70% thereof (\$70,000).

In contrast, the "new formula" would not only exempt the \$100,000 insured portion of the deposit from being secured, it would also exempt an additional \$30,000 of such deposit from the requirements of 9-1402. Such result is accomplished by multiplying the total amount of the deposit by 70% and then subtracting the amount of insurance coverage (\$100,000) from the product so obtained. We find absolutely no statutory basis for using this computation. In fact, because such computation has the effect of exempting more than the FDIC insured portion of a local public funds deposit from the requirements of 9-1402, we believe it is in direct contradiction of K.S.A. 9-1407.

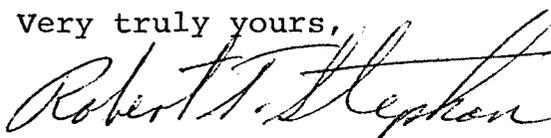
Therefore, it is our opinion that the provisions of K.S.A. 9-1407 exempt from the requirements of K.S.A. 1979 Supp. 9-1402 that securities be provided on local public funds deposits, only that portion of any such deposit that is insured by the FDIC. To determine the amount of such deposit for which securities must be provided by the depository bank, the amount of FDIC insurance coverage of such deposit is subtracted from the total amount of the deposit.

In concluding, we note that the foregoing opinion is consonant with the letter opinion of Attorney General William M. Ferguson dated November 14, 1961, wherein it was concluded that "a depository of public moneys should be required to give security for all of the deposit in excess of . . . federal deposit insurance." Although

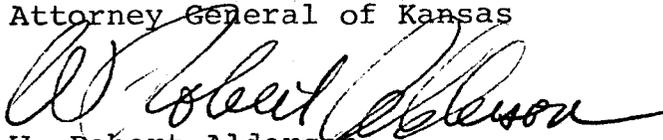
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K.S.A. 1979 Supp. 9-1402 now requires security only to the extent of 70% of the deposit, the principle enunciated in that prior opinion is consonant with the conclusions reached herein.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



W. Robert Alderson  
First Deputy Attorney General

WRA:phf