



STATE OF KANSAS

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July 6, 1981

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ATTORNEY GENERAL OPINION NO. 81-154

The Honorable Joan Finney
State Treasurer
535 Kansas Avenue
BUILDING MAIL

Re: State Departments; Public Officers, Employees --
State Moneys -- Dormitory Rentals and Fees; Custodial Accounts

Synopsis: Student rentals and fees collected pursuant to K.S.A. 76-6a05 and delivered to the custody of the State Treasurer pursuant to K.S.A. 76-6a06 are custodial moneys within the meaning of the State Moneys Law, K.S.A. 75-4201 et seq. As such, these moneys are to be placed in custodial bank accounts arranged for by the Pooled Money Investment Board pursuant to K.S.A. 75-4213. Cited herein: K.S.A. 75-4201, 75-4213, 75-4214, 76-6a01, 76-6a05, 76-6a06.

* * *

Dear Mrs. Finney:

On behalf of the state Pooled Money Investment Board you inquire regarding the status of dormitory suspense accounts at institutions under the direction and control of the Kansas Board of Regents. Specifically, you ask "[w]hether dormitory suspense accounts at Regent's Institutions may properly be designated 'custodial accounts' by the Pooled Money Investment Board?"

Assuming the answer to this question is affirmative, you desire to know "[w]hat special procedures for handling these accounts as custodial accounts must be followed?" Due to the need to examine, in considerable detail, various accounting practices and bond documents, we will endeavor to respond to your second inquiry in a separate and subsequent opinion.

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You make your first request pursuant to K.S.A. 75-4214, which by its terms requires the Attorney General to opine on the first of these questions.

The "dormitory suspense accounts" to which you refer are created and governed by K.S.A. 76-6a01 et seq. (L. 1941 ch. 364), specifically K.S.A. 76-6a05, which provides for the collection of rents and boarding fees, and K.S.A. 76-6a06 which provides in pertinent part as follows:

"All moneys collected by the Board under the provisions of K.S.A. Section 76-6a04 and 76-6a05 shall be deposited monthly with the state treasurer, who shall act as and be the custodian thereof for and on behalf of said board. . . . The state treasurer shall credit the amount collected from and for each particular building to a separate fund. . . .

"The director of accounts and reports shall draw warrants upon the treasurer of the state against the funds created by this section upon the filing in his or her office of duly itemized and verified vouchers approved by the secretary of the board. Nothing contained in this section shall be construed as placing in the state treasury any money collected under this act and the legislature hereby declares that it does not intend to make such money subject to the provisions of section 24 of article 2 of the Kansas constitution." (Emphasis added.) See, also, K.S.A. 76-6a20.

K.S.A. 76-6a06, which was last amended in 1947, in our judgment illustrates a legislative intent that moneys collected for university and college dormitories are not to become part of the state treasury. The administration of these funds are governed by a more recent enactment, K.S.A. 1980 Supp. 75-4201 et seq., commonly known as the State Moneys Law. The first section of this Act defines "state moneys" to mean "all moneys in the treasury of the state or coming lawfully into the possession of the treasurer." (Emphasis added.) K.S.A. 1980 Supp. 75-4201(e).

K.S.A. 76-6a06 clearly provides for dormitory fees and rentals to be transferred to the custody of the treasurer; hence, such funds are "state moneys" and subject to the terms of the

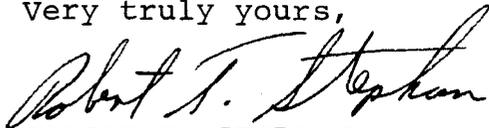
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State Moneys Law. Said law also defines "custodial moneys," as follows: "'Custodial moneys' means state moneys deposited with the treasurer which, in the written opinion of the Attorney General, are required by contract, bequest or law to be segregated from other bank accounts." K.S.A. 76-4201(f).

Returning to the emphasized portions of K.S.A. 76-6a06, above, it is apparent that the legislature intended the treasurer to be the "custodian" of moneys collected pursuant to K.S.A. 76-6a05, and that "the amount collected from and for each particular building" are to be credited "to a separate fund." Id. Such language constitutes, in our opinion, explicit direction that student dormitory rents and fees are to be treated as "custodial money." As previously cited, K.S.A. 75-4213 requires custodial moneys to be deposited in "custodial accounts," which are defined in the State Moneys Law as "a state bank account of custodial moneys." K.S.A. 1980 Supp. 75-4201(1). We note in passing that some confusion is created by the use of various terms of the Act as to which moneys are "state moneys." As we stated, custodial accounts include only state moneys, yet K.S.A. 75-4201(g) defines "special moneys" to include moneys in custodial accounts. That section, however, does not include reference to state moneys in defining "special moneys." This omission however, does not detract from the expression of legislative intent that the moneys herein considered are custodial moneys.

Thus, in our opinion, student rentals and fees collected pursuant to K.S.A. 76-6a05 and delivered to the custody of the State Treasurer pursuant to K.S.A. 76-6a06 are custodial moneys within the meaning of the State Moneys Law, K.S.A. 75-4201 et seq. As such, these moneys are to be placed in custodial bank accounts arranged for by the Pooled Money Investment Board pursuant to K.S.A. 75-4213.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

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