



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 149

Mr. Roy P. Britton  
State Bank Commissioner  
Banking Department  
818 Kansas  
Topeka, Kansas 66612

Re: Banks and Banking -- Powers -- Unlawful Preferences

Synopsis: Refunding revenue bond proceeds deposited with Kansas banks and trust companies pursuant to trust agreements as provided by K.S.A. 1981 Supp. 10-116a, are not deposits of public funds pursuant to K.S.A. 1981 Supp. 9-1402, as amended by House Bill No. 2139, 1982 Legislative Session. Cited herein: K.S.A. 1981 Supp. 9-1402, as amended by House Bill 2139, 1982 Legislative Session, K.S.A. 1981 Supp. 10-116a, K.S.A. 1981 Supp. 12-1749a.

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Dear Mr. Britton:

You have requested our opinion whether refunding industrial revenue bond proceeds deposited under an escrow agreement in a trustee bank pursuant to K.S.A. 1981 Supp. 10-116a, if subsequently invested in a certificate of deposit in another bank would require a pledge of security pursuant to K.S.A. 1981 Supp. 9-1402, as amended by House Bill No. 2139, 1982 Legislative Session, which provides in pertinent part:

"Before any deposit of public moneys or funds shall be made by any municipal corporation or quasi-municipal corporation of the state of Kansas with any state or national bank or trust company . . . such municipal or quasi-municipal corporations shall obtain security for such deposit . . ."

Industrial revenue bonds issued pursuant to K.S.A. 12-1740 et seq. may be refunded pursuant to K.S.A. 1981 Supp. 12-1749a which provides in pertinent part:

"Any city which has or may hereafter issue revenue bonds under the provisions of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, may issue refunding revenue bonds, in the manner prescribed by and subject to the provisions of K.S.A. 1980 Supp. 10-116a, to refund any previous issue or issues, or part thereof, of such revenue bonds outstanding."

K.S.A. 1981 Supp. 10-116a provides in pertinent part:

"Any municipal . . . corporation which has issued or may hereafter issue revenue bonds under the laws of the state of Kansas, may issue, without an election, revenue bonds pursuant to the provisions of this act to refund any revenue bond issue or issues, or part thereof, which have been outstanding for more than one year. . . . If such refunding revenue bonds are sold more than six (6) months prior to the maturity or earliest prior redemption date of the bonds being refunded the proceeds derived from such sale, together with any other moneys on hand, shall be placed in escrow under a trust agreement with a Kansas bank having full trust power. Said proceeds and moneys shall be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America, which obligations shall mature or be subject to redemption by the holders thereof not later than the respective dates when the proceeds of said obligations together with the interest accruing thereon and any other moneys or investments held in escrow will be required for the purposes intended."

Your question arises as a result of a Kansas trustee bank, under the provisions of K.S.A. 1981 Supp. 10-116a, placing a \$100,000.00 investment of certain refunding revenue bond proceeds of the City of Halstead, Kansas, in another bank in a certificate of deposit. Kansas state bank examiners question the deposit being secured pursuant to K.S.A. 1981 Supp. 9-1402 as amended by House Bill No. 2139, 1982 Legislative Session. The issue being, if the deposit is one of public money as is defined in K.S.A. 1981 Supp. 9-701(1), then the security would

be proper; however, if the deposit is not one of public moneys then the security deposit would be an unlawful preference under the provisions of K.S.A. 1981 Supp. 9-1113.

K.S.A. 1981 Supp. 9-701(1), provides in pertinent part:

"'Public moneys' shall mean . . . all moneys coming into the custody of any officer of any municipal . . . corporation, the state or any political subdivision thereof, pursuant to any provisions of law authorizing any such official to collect or receive the same."

K.S.A. 1981 Supp. 9-1113, provides in pertinent part:

"No bank or trust company shall give any preference to any depositor either by pledging any of its assets as collateral security or in any other manner . . . ."

If the proceeds of the refunding bonds are deposited pursuant to a trust agreement, you inquire whether the funds are not then in the custody of the city and therefore not a deposit of public moneys in accordance with K.S.A. 9-1402, as amended by House Bill No. 2139, 1982 Legislative Session. K.S.A. 1981 Supp. 9-701(1) provides that public moneys or funds shall be funds "coming into the custody of" a public official. The proceeds of the sale of refunding bonds are paid initially by the purchaser of the bonds to the city refunding the outstanding revenue bonds. The bond proceeds are then placed in the escrow account with the trustee bank pursuant to the trust agreement and K.S.A. 1981 Supp. 10-116a.

K.S.A. 1981 Supp. 10-116a provides in pertinent part:

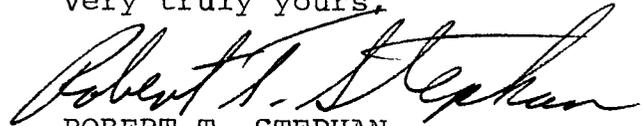
"Such refunding revenue bonds issued pursuant to this act shall . . . be governed by the laws governing such matters with respect to the bonds being refunded and all other laws generally applicable to revenue bonds issued in this state by such municipal or quasi-municipal corporation."

Here, the bank, as trustee, has invested refunding revenue bond proceeds in a certificate of deposit with another bank. This office has long held that the details pertaining to the issuance of industrial development revenue bonds and the terms and conditions thereof, including the investment of bond proceeds, shall be determined by ordinance of the city pursuant to K.S.A. 1981 Supp. 12-1743. See Attorney General Opinion No. 80-58 and 81-117. It is our opinion that whether the bond

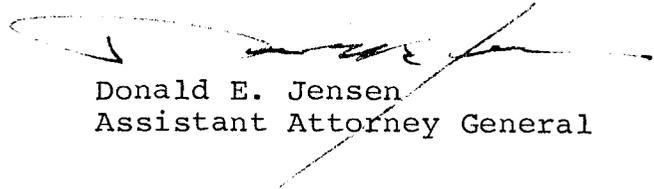
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proceeds or other funds resulting from the issuance of such bonds would be secured is to be determined by ordinance of the city. Such funds may or may not be secured depending on the terms of the ordinance. It is our opinion that, if the ordinance required security, such security would not be an unlawful preference in accordance with K.S.A. 1981 Supp. 9-1113. Therefore, it is our opinion that it was not the intent of the legislature to include within the meaning of "public moneys" as is defined in K.S.A. 1981 Supp. 9-701(1) funds received by a municipality under the provisions of K.S.A. 12-1740 et seq., and K.S.A. 1981 Supp. 10-116a, even though such funds technically come into the custody of the city officials. Whether, such a deposit would require security would be determined by the ordinance authorizing the issue.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Donald E. Jensen  
Assistant Attorney General

RTS:BJS:DEJ:hle