



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 34

William R. Kauffman
State Board of Regents
1416 Merchants National Bank Building
Topeka, Kansas 66612

Re: State Departments; Public Officers, Employees --
State Moneys -- NDSL Fund; Interest Credited to
Special Fund

Synopsis: Moneys received by state educational institutions
from the U.S. Department of Education under the
National Direct Student Loan Program are state
moneys which must be deposited in a special fund,
and any interest generated by such fund is to be
credited to the fund and not the state general
fund. Cited herein: K.S.A. 75-3734, K.S.A. 1982
Supp. 75-4201, K.S.A. 75-4210a, 76-723, 20 U.S.C.A.
§1087aa, 34 C.F.R. §§674.5, 674.8, 674.19.

* * *

Dear Mr. Kauffman:

You request the opinion of this office regarding the applica-
tion of K.S.A. 75-4210a to moneys received by the State of
Kansas from the United States Department of Education for
the National Direct Student Loan Program, as authorized by
20 U.S.C.A. §1087aa et seq., and implemented by 34 C.F.R.
Part 674. Specifically, you desire to know if interest earned
on such moneys is to be deposited in the general fund or to
some other fund. We note that the federal moneys under the
NDSL Program are state moneys once received by the state
treasurer pursuant to the State Moneys Law, K.S.A. 1982 Supp.
75-4201 et seq., K.S.A. 75-3734, and K.S.A. 76-723.

K.S.A. 75-4210a, a section of the State Moneys Law, provides:

"Any moneys received from interest earned on state moneys shall be credited to the state general fund, unless required by law, contract or bequest to be credited to a fund other than the state general fund."

Federal regulations require that to receive NDSL funds, an educational institution, such as those under the control of the Kansas Board of Regents, must make application to the Secretary of Education. 20 C.F.R. §674.5. State law authorizes educational institutions to make application for NDSL funds. K.S.A. 76-723. Such application may contain a request "to spend the income of its Fund (that income includes repayments made by borrowers and interest earned on Fund cash)." (Emphasis added.) 20 C.F.R. §674.5(a)(2).

These regulations further require the educational institution to enter into an agreement with the Secretary for use of the federal NDSL funds. 20 C.F.R. §674.8. The agreement requires the institution to establish a Student Loan Fund (Fund), into which must be deposited the following:

- "(1) Federal capital contributions appropriated under section 461 of the Act;
- "(2) Institutional capital contributions equal to at least one-ninth of the Federal contributions described in paragraph (a)(1) of this section;
- "(3) Funds provided by the Secretary under section 468 of the Act;
- "(4) Principal and interest collected on student loans made from the Fund, except those amounts collected on loans made with funds described in paragraph (a)(3) of this section;
- "(5) Payments to the institution as the result of direct loan cancellations under section 465(b) of the Act;
- "(6) Penalty charges collected under §674.32(f);
- "(7) Any other Fund earnings including interest earned on those funds; and

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"(8) Any short term, no interest loans it makes to the fund in anticipation of collections." (Emphasis added.) 20 C.F.R. §674.8(a).

We understand that institutions of the Board of Regents participating in the NDSL Program have entered into the required agreements. Specifically, we have examined copies of Program Participation Agreements for both the University of Kansas and Kansas State University signed in 1981. Both contain a provision similar to the above regulation requiring the deposit of interest earnings in the Fund. See Program Participation Agreements, Article V, §2(f).

Finally, we note that the federal regulations governing the fiscal procedures and records for the use of such Fund does not require a separate bank account, unless the internal accounting procedures of the institution do not meet certain requirements as determined by the Secretary of Education. 20 C.F.R. §674.19. One criteria for determining whether a separate bank account is required is the adequacy of the internal accounting procedures in identifying "the earnings of the Fund." 20 C.F.R. §674.19(b)(1)(iii). If a separate bank account is to be required by the Secretary,

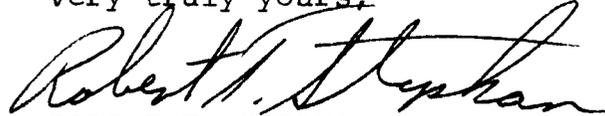
"[t]hat separate bank account must be identified as the institution's NDSL Fund account and must contain all the cash of the institution's NDSL Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, Direct loan cancellation payments, and any earnings of the Fund including interest." (Emphasis added.) 20 C.F.R. §674.19(b)(3).

We have no hesitation concluding that the federal regulations require a separate fund to be created for NDSL moneys and that interest earned on that fund be credited and returned to that fund. In addition, the agreements between the institutions and the Department of Education also require such accounting of interest earned on the NDSL moneys. Kansas law, K.S.A. 75-4210a, seems to contemplate precisely this situation and provides an exception for interest earned on certain funds, such as NDSL funds, from being credited to the general fund.

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Therefore, it is our opinion that moneys received by state educational institutions from the U.S. Department of Education under the National Direct Student Loan Program are state moneys which must be deposited in a special fund, and any interest generated by such fund is to be credited to the fund and not the state general fund.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General

RTS:BJs:hle