



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83-184

Colt Knutson
Riley County Attorney
Riley County Courthouse
430 Poyntz Avenue
Manhattan, Kansas 66502

Re: Banks and Banking -- Deposit of Public Moneys --
Designation of Depositories by Quasi-Municipal
Corporations

Synopsis: K.S.A. 9-1401, as amended by L. 1983, ch. 47, §2, provides that the governing body of any quasi-municipal corporation shall designate the banks, savings and loan associations and savings banks which shall serve as depositories of its funds. The term "quasi-municipal corporation" is defined (at K.S.A. 9-701, as amended by L. 1983, ch. 46, §1) to include any governmental subdivision, other than a city, having the authority to receive or hold moneys or funds. A non-profit corporation which receives federal, state and county moneys, whose directors are appointed by county commissions in a four-county area, and which provides social services to developmentally disabled persons is a quasi-municipal corporation under K.S.A. 9-701, as amended, and so may designate depository institutions receive and hold its funds pursuant to K.S.A. 9-1401, as amended. Cited herein: K.S.A. 9-701, as amended by L. 1983, ch. 46, §1, K.S.A. 9-1401, as amended by L. 1983, ch. 47, §2, K.S.A. 19-1402, as amended by L. 1983, ch. 47, §3, K.S.A. 9-1407, K.S.A. 12-1675, as amended by L. 1983, ch. 47, §7, K.S.A. 19-4007, K.S.A. 65-4404, K.S.A. 1983 Supp. 79-1947.

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Dear Mr. Knutson:

As County Attorney for Riley County, Kansas, you request our opinion on a question concerning the deposit of public moneys by a non-profit corporation. Specifically, you inquire whether Big Lakes Developmental Center, Inc., qualifies as a quasi-municipal corporation for the purposes of K.S.A. 9-1401 et seq., which act allows municipal and quasi-municipal corporations to designate depository institutions which may receive and hold the corporations active funds. This then is not a question concerning the investment of idle funds under K.S.A. 12-1675, regarding which this office has issued numerous prior opinions. See, e.g., Attorney General Opinion Nos. 83-88, 84-142.

By way of factual background, we are informed that Big Lakes Developmental Center is a non-profit corporation which contracts to provide services for developmentally disabled persons in a four-county area in north central Kansas. K.S.A. 19-4007. The center's by-laws provide for a twelve person board of directors, with three each being appointed by the participating counties (Pottawatomie, Geary, Clay and Riley). In addition to federal funds, the center receives moneys from the state under the Community Mental Health and Mental Retardation Assistance Act (K.S.A. 65-4401 et seq.), as well as the proceeds from a levy (3/4 of a mill) which each county imposes under K.S.A. 1982 Supp. 79-1947. The center is responsible for submitting a report to the county (or counties) which shows how its funds are spent each year, as well as reporting on the types of services it provides. [K.S.A. 19-4007(b)]. The corporation also reports annually to the Secretary of Social and Rehabilitation Services. K.S.A. 65-4404. It is a fair characterization of the situation to say that the center provides services and programs which would otherwise have to be offered by the state or one of its political and taxing subdivisions; if they were to be offered at all. In short, the situation is very much like that in Attorney General Opinion No. 79-284, which concluded that such bodies are subject to the Kansas Open Meetings Act, K.S.A. 75-4317 et seq.

K.S.A. 9-1401 et seq. concerns the deposit of public moneys which are considered active (i.e., demand deposits, time deposits and savings deposits), as opposed to those which are not currently required, or idle, which funds are governed by K.S.A. 12-1675, as amended by L. 1983, ch. 47, §7. K.S.A. 9-1401, as amended, provides the following procedure [at subsection (a)]:

"The governing body of any municipal corporation or quasi-municipal corporation shall designate by official action recorded upon its

minutes the state and national banks, trust companies, state and federally chartered savings and loan associations and federally chartered savings banks which shall serve as depositories of its funds and the officer and official having the custody of such funds shall not deposit such funds other than at such designated banks, trust companies, savings and loan associations and federally chartered savings banks. The state and national banks, trust companies, state and federally chartered savings and loan associations and federally chartered savings banks which have home offices located in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located shall be designated as such official depositories if the municipal or quasi-municipal corporation can obtain satisfactory security therefor."

Once such a designation is made, the depository institution is required to provide securities of the types listed by K.S.A. 9-1402, as amended by L. 1983, ch. 47, §3, for any deposits it receives. In that securities do not have to be pledged for those deposits which are covered by federal insurance (K.S.A. 9-1407), as a practical matter the provisions of K.S.A. 9-1402, as amended, come into effect only for amounts in excess of \$100,000. Attorney General Opinion No. 83-55A.

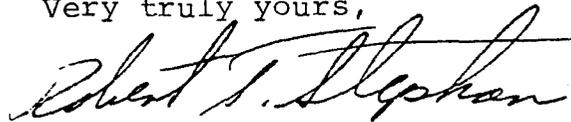
In determining what constitutes a quasi-municipal corporation for the purposes of K.S.A. 9-1401 et seq., reference can be made to the definitional section for the Kansas Banking Code, K.S.A. 9-701, as amended by L. 1983, ch. 46, §1. Therein, the term is defined [at subsection (n)] to mean "any county, township, school district, drainage district, or any other governmental subdivision in the state of Kansas having authority to receive or hold moneys or funds." This list is further expanded by K.S.A. 9-1401(c), as amended, which includes for the purposes of Article 14 each "investing governmental unit under K.S.A. 12-1675 and amendments thereto." Therein, at subsection (a), are listed:

"[A]ny county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any other governmental entity, unit or subdivision in the state of Kansas having authority to receive, hold and expend public moneys or funds."

In applying the above definitions to the facts here, it is apparent that Big Lakes Developmental Center, Inc. is not merely a non-profit corporation which has entered into an arms-length transaction with the four counties to provide services for the developmentally disabled. Rather, through the control of the board of directors by the four county commissions, the center has become an agency of county government, providing services which each county would otherwise provide itself. Therefore, in fact if not in name, the center is a "community facility for the mentally retarded," with the authority to "receive, hold and expend public moneys or funds." [K.S.A. 12-1675(a), as amended.] Put another way, the facts indicate that the center is a public agency created or authorized by the legislature to aid the state in, or to take charge of, some public or state work for the general welfare [1 McQuillin, Municipal Corporations, §2.13, 3rd ed. (1971)], and so can properly be classed as a quasi-municipal corporation. We note that our conclusion would be otherwise if, indeed, the corporation was an independent contracting party not controlled by county government.

In conclusion, K.S.A. 9-1401, as amended by L. 1983, ch. 47, §2, provides that the governing body of any quasi-municipal corporation shall designate the banks, savings and loan associations and savings banks which shall serve as depositories of its funds. The term "quasi-municipal corporation" is defined (at K.S.A. 9-701, as amended by L. 1983, ch. 46, §1) to include any governmental subdivision, other than a city, having the authority to receive or hold moneys or funds. A non-profit corporation which receives federal, state and county moneys, whose directors are appointed by county commissions in a four-county area, and which provides social services to developmentally disabled persons is a quasi-municipal corporation under K.S.A. 9-701, as amended, and so may designate depository institutions receive and hold its funds pursuant to K.S.A. 9-1401, as amended.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle