



STATE OF KANSAS

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November 13, 1985

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ATTORNEY GENERAL OPINION NO. 85- 157

Jeffery A. Mason
Foust & Vignery
214 E. 10th Street
P.O. Box 767
Goodland, Kansas 67735

Re: Banks and Banking -- Banking Code; Deposit of
Public Moneys -- Security for Deposits; Exemption
for Peak Deposit Periods

Synopsis: K.S.A. 1984 Supp. 9-1403(a) permits a school district and a financial institution to designate peak deposit periods for periods of up to 60 days in length and not more than 120 days per year. During such periods, the amount required to be pledged by the financial institution as security for the deposit of public funds is reduced to 50% of the amount usually required by K.S.A. 1984 Supp. 9-1402, as amended by L. 1985, ch. 58. While the statute does not establish a minimum time limit for such peak deposit periods, but instead leaves them to be negotiated between the school district and the financial institution, a designation of two periods of one (1) day each would appear to be unreasonable. Further, no sanctions exist in the statute whereby a financial institution may be required to agree to a specific time period or face a penalty, either civil or criminal in nature. Finally, determination of peak deposit periods should be made by the school board, although formal written designation is to be made by the treasurer or financial officer of the school district. Cited herein: K.S.A. 1984 Supp. 9-1401; K.S.A. 1984 Supp. 9-1402, as amended by L. 1985, ch. 58, §1;

K.S.A. 1984 Supp. 9-1403; K.S.A. 1984 Supp. 9-1405,
as amended by L. 1985, ch. 58, §4; K.S.A. 1984
Supp. 12-1675; 12-1678a.

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Dear Mr. Mason:

As a member of the law firm which represents Goodland Unified School District No. 252, you request our opinion on a question concerning the application of K.S.A. 1984 Supp. 9-1403. That statute, which was the subject of another recent opinion of this office, No. 85-109, permits a reduction in the amount of security which a bank or other financial institution must provide in order to secure the deposit of public funds belonging to a municipal or quasi-municipal corporation. This is done through the designation of "peak deposit periods" in which the security requirement is reduced to 50% of the amount deposited, rather than the 100% usually required by K.S.A. 1984 Supp. 9-1402, as amended by L. 1985, ch. 58, §1. Your two inquiries concern the way in which the length of such periods may be established, and the proper person within the district to designate the periods.

As was noted in Opinion No. 85-109 (a copy of which you already have), the language of K.S.A. 1984 Supp. 9-1403 makes the designation of peak deposit periods subject to negotiation between the municipality (in this case, the school district) and the financial institution, which may be either a bank, trust company, savings and loan association or federal savings bank. An earlier opinion, No. 81-108, concluded that while some features of the statute were mandatory in nature (i.e. maximum length of any one period is 60 days, no more than 120 days in any one year, written designation must be made and kept on file), there is no minimum length set for any one peak deposit period. Given this, there would appear to be no statutory barrier to designating two peak deposit periods of one day each.

However, in our opinion such action would very likely be improper under the statute's intent, and additionally would be impossible to achieve as a practical matter. As the meaning the words suggest, designation of "peak deposit periods" under K.S.A. 1984 Supp. 9-1403 is intended to afford a financial institution some relief from the 100% pledging requirements of K.S.A. 1984 Supp. 9-1402, as amended, during certain times of the year. A county, for example, can expect as a matter of course to receive large amounts of revenue during the months

of December and June as property taxes are paid. Through the mechanism of a peak deposit period, a financial institution is not required to add additional securities to secure the extra moneys, which will soon be passed on through the account. Since such times of large revenue changes are predictable under the statutes governing payment of taxes and distribution of revenues, peak deposit periods allow a financial institution to continue to receive public moneys without creating an excessive need for short-term securities, while at the same time providing some protection, albeit at a reduced level, for the municipality's funds.

Designation of a one-day peak deposit period would not meet the above purpose, for any large increase in the amount held in deposit would occur over a longer period of time, and thus require the financial institution to greatly increase the amount of security pledged, leaving the one-day reduction of limited value. We presume from your letter that the two periods contemplated by the school district (January 20 and April 20) are intended to cover days which the school district has designated to receive transfers of funds from the county treasurer (K.S.A. 1984 Supp. 12-1678a). Clearly, while it may be possible to definitely set these two days as those on which revenues will be added to the account, such moneys will not all be paid out on the same day, leaving the financial institution with the continuing duty to pledge additional security. Further, since the process of pledging additional security involves both obtaining such instruments as are permitted to be used under K.S.A. 1984 Supp. 9-1402, as amended, and physically depositing them with another financial institution (K.S.A. 1984 Supp. 9-1405, as amended by L. 1985, ch. 58, §4), a reduction in pledging requirements for only one day would be of minimal use to a financial institution.

As a practical matter, we doubt whether a financial institution would consent to peak deposit periods of only one day, for the reasons outlined above. As the statutes do not contain any means by which a municipality may require a financial institution to agree to prescribed peak deposit periods, but rather make such a determination the subject of negotiations, no means exists for the imposition of either civil or criminal penalties if the one day period would not be agreed to. While the municipality would have the option of contacting other financial institutions, limits do exist (K.S.A. 1984 Supp. 9-1401, 12-1675) as to the range of institutions which may receive such deposits of public funds. As this is the case, it is certainly to be hoped that the

school district and the financial institution in question would be able to reach a compromise.

Your final inquiry concerns the identity of the person who should designate the peak deposit periods on behalf of the district. K.S.A. 1984 Supp. 9-1403(b) provides that the "custodian of the funds" of the municipality is to make a written designation of the peak deposit times with an officer of the financial institution. This language would place the duty to execute the document with the district's treasurer or financial officer. However, as the setting of the periods involves a matter of district policy, it would be proper for the school board to direct its employee how to proceed through a formal resolution.

In conclusion, K.S.A. 1984 Supp. 9-1403(a) permits a school district and a financial institution to designate peak deposit periods for periods of up to 60 days in length and not more than 120 days per year. During such periods, the amount required to be pledged by the financial institution as security for the deposit of public funds is reduced to 50% of the amount usually required by K.S.A. 1984 Supp. 9-1402, as amended by L. 1985, ch. 58. While the statute does not establish a minimum time limit for such peak deposit periods, but instead leaves them to be negotiated between the school district and the financial institution, a designation of two periods of one (1) day each would appear to be unreasonable. Further, no sanctions exist in the statute whereby a financial institution may be required to agree to a specific time period or face a penalty, either civil or criminal in nature. Finally, determination of peak deposit periods should be made by the school board, although formal written designation is to be made by the treasurer or financial officer of the school district.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General