



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 88

Eugene T. Barrett, Jr.
State Bank Commissioner
Banking Department
700 Jackson, Suite 300
Topeka, Kansas 66603-3714

Re: Banks and Banking -- Banking Code; Deposit of
Public Moneys -- Applicability of K.S.A. 1985 Supp.
9-1402 to the Kansas Public Employees Retirement
System

Synopsis: K.S.A. 1985 Supp. 9-1402 does not apply to the
Kansas Public Employees Retirement System (KPERS).
K.S.A. 1985 Supp. 9-1402 is intended to regulate
the deposit of public moneys or funds of municipal
corporations and quasi-municipal corporations.
KPERS is not a municipal corporation or quasi-
municipal corporation for the purposes of K.S.A.
1985 Supp. 9-1402. KPERS deposits of public
moneys and funds are regulated in K.S.A. 74-4901
et seq. Cited herein: K.S.A. 1985 Supp.
9-1401 et seq.; 9-1401; 9-1402; 12-1675; K.S.A.
74-4901 et seq.; 74-4903; 74-4909.

* * *

Dear Commissioner Barrett:

As the Commissioner of the Banking Department for the State of
Kansas, you request our opinion on a question concerning
K.S.A. 1985 Supp. 9-1402. Specifically, you inquire as to
whether moneys deposited by the Kansas Public Employees
Retirement System (KPERS) qualify as public funds pursuant

to K.S.A. 1985 Supp. 9-1402, which mandates that such funds be pledged by certain securities.

K.S.A. 1985 Supp. 9-1401(c) states:

"As used in this section and K.S.A. 9-1402, 9-1403 and 9-1405, and amendments thereto, to such sections, 'municipal corporation or quasi-municipal corporation' includes each investing governmental unit under K.S.A. 12-1675 and amendments thereto."

K.S.A. 1985 Supp. 12-1675 states in part:

"The governing body of any 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 may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other statute."

The phrase "or any other governmental entity, unit or subdivision in the state of Kansas" relates back to the "county, city, township, . . ." portion of K.S.A. 1985 Supp. 12-1675. In our judgment, the legislature did not intend to include all other governmental units with this phrase. The intent was to include local governmental units that are similar to the counties, cities, etc., and not specifically listed in the statute.

The phrase "the investment of which is not subject to or regulated by any other statute," further removes KPERS from K.S.A. 1985 Supp. 9-1402. KPERS is pre-empted from K.S.A. 1985 Supp. 9-1402 because KPERS is subject to and regulated by K.S.A. 74-4901 et seq.

K.S.A. 74-4903 states:

"There is hereby created the 'Kansas public employees retirement system' which shall be a body corporate and an instrumentality of the state of Kansas. The system shall be vested with the powers and duties specified in this act and such other powers as may be necessary or proper to enable it, its officers, employees and agents to carry out fully and effectively the purposes and intent of this act."

K.S.A. 74-4901 describes the legislative purpose and intent of the act creating the Kansas Public Employees Retirement System (KPERS), and an entire article is set aside dealing exclusively with KPERS and similar entities. K.S.A. 74-4901 et seq.

K.S.A. 74-4909 states in part:

"(1) The board of trustees shall be responsible for the general administration of the system, subject to the provisions of this act.

"(2) The board shall establish rules and regulations for the administration of the system and for the transaction of its business consistent with law, which rules and regulations shall be filed in the office of the revisor of statutes.

. . . .

"(4) All meetings of the board shall be open to the public. The board shall keep a record of its proceedings.

. . . .

"(7) The board or the investment committee may invest all cash not required for current payments in securities eligible for investment under this act. All actions of the investment committee shall be reported to the board at the first meeting of the board following the action of the investment committee.

. . . .
"(9) All decisions of the board as to questions of fact shall be final and conclusive on all persons except for the right of review as provided by law and except for fraud or such gross mistake of fact as to have an effect equivalent to fraud." (Emphasis added.)

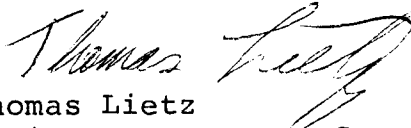
As you can see, the statutes regulating municipal corporations and quasi-municipal corporations do not apply to KPERS. The legislature intended for cities, counties and the like to deposit their money locally, and adequately secure these deposits. Tangentially, the legislature viewed KPERS not as a "subdivision of the state" but as a "body corporate and instrumentality of the state." KPERS is a state-wide entity subject to its own unique regulations, not a township or drainage district which requires the additional regulations of K.S.A. 9-1401 et seq. Concern of inadequate security for KPERS deposits are addressed in K.S.A. 74-4909, which mandates accounting, open meetings, actions for fraud and gross negligence and the like.

In summary, K.S.A. 1985 Supp. 9-1402 does not apply to KPERS. The statute is intended to regulate the deposit of public moneys or funds of municipal corporations and quasi-municipal corporations. KPERS is not a municipal corporation or a quasi-municipal corporation for the purposes of K.S.A. 1985 Supp. 9-1402.

Very truly yours,



ROBERT T. STEPHAN
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Thomas Lietz
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RTS:JLM:TL:crw