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ATTORNEY GENERAL OPINION NO. 88- 36

Frances A. Squyres
General Counsel
Kansas Department of Commerce
400 S.W. 8th, 5th Floor
Topeka, Kansas 66603-3957

Re: State Boards, Commissions and Authorities--Local
Seed Capital Pools--Income Tax Credit for Cash
Investment; Limitations; Definitions

Synopsis: A fund established by a corporation to provide
funding for the corporation's own business or
subsidiary (exclusively) does not constitute a
"local seed capital pool," as that term is defined
in subsection (c) of K.S.A. 1987 Supp. 74-8401.
Cited herein: K.S.A. 1987 Supp. 74-8401; 74-8402.

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Dear Ms. Squyres:

You request our opinion as to whether certification of a local
seed capital pool should be granted to an entity that has the
intent to utilize the funds to invest in its own business or
subsidiary exclusively.

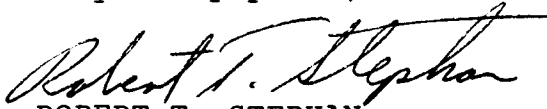
The 1987 Kansas Legislature provided for the certification of
local seed capital pools to encourage and assist in the
creation of Kansas businesses. K.S.A. 1987 Supp. 74-8402. An
income tax credit was granted for cash investment in a
certified local seed capital pool. K.S.A. 1987 Supp.
74-8401(a). Subsection (c) of K.S.A. 1987 Supp. 74-8401
defines the term local seed capital pool:

"As used in this section, (1) 'local seed capital pool' means money invested in a fund established to provide funding for use by small businesses for any one or more of the following purposes: (A) development of a prototype product or process; (B) a marketing study to determine the feasibility of a new product or process; or (C) a business plan for the development and production of a new product or process." (Emphasis added.)

As the underscored portion of the above-quoted statutory excerpt indicates, money must be invested in a fund in order to constitute a local seed capital pool. While the legislature has not included a definition of the term "invested," the term is not unusual or one possessing a technical meaning, and should be construed in its ordinary sense, i.e. to commit (money) in order to earn a financial return. Webster's New Collegiate Dictionary, p. 608 (1973). Applying the above definition to the question you pose, we do not believe that money has been "invested" by a corporation where the fund is to be used to support the corporation's own business or subsidiary. Specifically, it is our opinion that there can be no financial return (income or profit) where one is dealing with one's self. In such circumstances, although money has been "passed through" a fund, it has not been invested therein.

For the reasons stated above, it is our opinion that a fund established by a corporation to provide funding for the corporation's own business or subsidiary (exclusively) does not constitute a "local seed capital pool," as that term is defined in subsection (c) of K.S.A. 1987 Supp. 74-8401.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General