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ATTORNEY GENERAL OPINION NO. 89-109

Harold T. Walker
Kansas City City Attorney
Ninth Floor, Municipal Office Building
701 North Seventh Street
Kansas City, Kansas 66101

Re: Cities and Municipalities--Miscellaneous
Provisions--Investment of Public Moneys by
Governmental Subdivisions, Units and Entities

Synopsis: In our opinion, a multi-year investment of idle
funds, under conditions enumerated herein, is
permissible under the provisions of K.S.A. 1988
Supp. 12-1675, as amended by L. 1989, ch. 48, §66.
Cited herein: K.S.A. 10-1113; K.S.A. 1988 Supp.
12-1675; 12-1676; K.S.A. 79-2927; 79-2934; L. 1989,
ch. 48, §66; L. 1989, ch. 295, §1.

* * *

Dear Mr. Walker:

You request our opinion regarding the ability of a
municipality to encourage economic development through the
investment of idle funds. Specifically, you indicate that the
city of Kansas City, Kansas, is considering a proposal to
provide incentives to developers constructing within the city
of Kansas City, Kansas, projects which are critical to the
future of the city and Wyandotte County. You advise that
the proposal requires the investment of temporarily idle
government funds in a manner which would encourage financial
institutions to invest in the community, and describe the
proposal as follows:

"In the specific proposals received, the city, the Board of Public Utilities and the County of Wyandotte would be requested to invest a sum certain in a local bank. The local bank would then loan the developer the money at a reduced rate for ten years. Zero percent interest would be paid to the governmental units on the amount deposited. For the ten [year] period the governmental bodies would agree to maintain on deposit a minimum amount of their temporarily idle funds on a declining balance basis. Of course, if the funds are needed for the purposes for which they were budgeted and appropriated, they would be withdrawn from the deposit. In such case the governmental units would pay a penalty and would be obligated to reinvest in the local bank to the specified level when funds again become available. The amount to be obligated by each of the governmental units is substantially less than the normal beginning year uncumbered [sic] fund balance for each of the governmental units."

In regard to investment of idle funds, you indicate that all requirements of statutory provisions will be followed, and state as follows:

"Security will be maintained and at no time will the invested funds be at a risk greater than normal City investments. Although the City will not receive direct return in interest on an investment it will have a return on the investment through the benefits received from the Economic Development activity encouraged and in the receipt of an ownership interest in the property after the ten year period of the loan amortization."

Investment of idle funds (i.e. those funds "not immediately required for the purposes for which [they] were collected or received") is governed by K.S.A. 1988 Supp. 12-1675, as amended by L. 1989, ch. 48, §66, which sets out the permissible ways in which governmental entities can act. As

set out in subsection (b), permissible investments include the governmental entities own temporary notes; time deposit, open accounts or certificates of deposit; time certificates of deposit; repurchase agreements; and United States treasury bills or notes. As long as the proposal being considered by the city of Kansas City incorporates one of these methods, it would be in compliance with the statute. Additionally, as K.S.A. 1988 Supp. 12-1676, as amended by L. 1989, ch. 48, §67, prescribes that interest on deposits shall be at rates agreed upon by the governmental unit and the local banks or savings and loans, there is no prohibition on investment of idle funds at zero percent interest. In our judgment, the authorized investments also contemplate that an interest penalty will be imposed if a withdrawal is made prior to maturity; in this regard, any penalty imposed under the economic development proposal you are considering should be reasonable and in line with the normal interest penalty for withdrawal prior to maturity.

In regard to the multi-year nature of the proposed investment, it should be noted that the budget law specifically provides, with exceptions not pertinent here, that the budget for each fund of a municipality may include a non-appropriated balance of not to exceed five percent of the total of each fund. K.S.A. 79-2927, as amended by L. 1989, ch. 295, §1. Additionally, K.S.A. 79-2934 prescribes that any balance remaining in a fund at the end of the current budget year shall be carried forward to the credit of the fund for the ensuing budget year. Thus, the budget law contemplates that municipalities may perpetually have unappropriated reserves in their various funds. Under such circumstances, it is our opinion that the budget law cannot be construed as prohibiting a multi-year investment of the reserves existing in the various funds of a municipality (under the conditions set forth above).

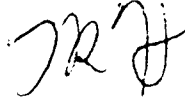
Finally, it does not appear that the proposed investment would violate the cash-basis law. By following sound accounting practices, the city could avoid creating an indebtedness in excess of the amount of funds actually on hand in the treasury at the time for such purpose, as required by K.S.A. 10-1113.

The mere investment of idle funds does not, by itself, create a violation of the cash-basis law.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm