



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 17, 1992

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 92- 9

Robert Fairchild
Douglas County Counselor
808 Massachusetts Street
P.O. Box B
Lawrence, Kansas 66044

Re: Banks and Banking; Trust Companies -- Banking Code;
Trust Authority -- Investment of Public Moneys;
Repurchase Agreements

Cities and Municipalities -- Miscellaneous
Provisions -- Investment of Public Moneys by
Governmental Subdivisions, Units and Entities;
Repurchase Agreements

Synopsis: The bank trust department is not a separate legal entity from the bank of which it is a part. K.S.A. 1990 Supp. 12-1675(4) allows a governmental entity to enter into a repurchase agreement as long as the funds are invested in a bank that has an office in at least one of the applicable sites listed in the statute. Cited herein: K.S.A. 1990 Supp. 9-701; K.S.A. 9-1601; K.S.A. 1990 Supp. 12-1675; K.S.A. 1990 Supp. 84-9-105; 84-9-304.

* * *

Dear Mr. Fairchild:

As Douglas county counselor, you have requested our opinion on the following questions concerning repurchase agreements:

"1. Is a bank trust department covered under the broader category of commercial bank, or is it considered a separate entity?

"2. When investing in repurchase agreements, what constitutes 'perfected title' in the pledged securities when a tri-party custodial arrangement and a Master Repurchase agreement is utilized?

"3. Is it necessary that the collateral be titled in the name of the particular public entity or is having the collateral in an account titled '_____ trust department as agent for the public entity,' and segregated from the bank's other assets sufficient?

"4. Does this type of arrangement involving two agreements, one with a local bank and another between the bank and an out-of-state party, comply with K.S.A. 12-1675?"

K.S.A. 1990 Supp. 9-701(a) defines bank as a "state bank incorporated under the laws of Kansas." Since there is no definition regarding what constitutes a bank trust department we must look at how the various statutes concerning trust authority regard a bank trust department. It should be noted we are referring to a bank that has a trust department within it, not a separate trust company.

K.S.A. 9-1601 et seq. sets out that it is the bank that applies for trust authority, pays for insurance through the federal deposit insurance corporation, and may liquidate, consolidate or merge upon appropriate approval. We find nothing establishing that a bank trust department is a separate legal entity from the bank. Therefore, we opine that a bank trust department is covered under the definition of a bank and the totality should be considered a single legal entity.

Next, you ask what constitutes perfected title in the pledged securities when a tri-party custodial arrangement and a Master Repurchase agreement is utilized. K.S.A. 84-9-105(1)(i) defines instrument as:

"[A] negotiable instrument (defined in section 84-3-104), or a security (defined in section 84-8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment."

Because the securities would be "instruments," the method of perfecting title is generally through possession pursuant to K.S.A. 1990 Supp. 84-9-304. However, there may be the option of perfecting title by notification if the collateral is held by a bailee. K.S.A. 1990 Supp. 84-9-305. The main thing that must always be strictly reviewed by the bank is whether the securities are delivered either to the bank or an independent entity who cannot be considered an agent of the borrower thus negating the "delivery" of the securities.

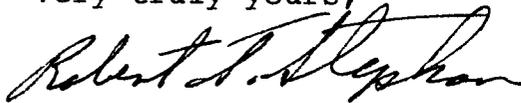
The third question deals with the wording necessary when titling collateral. The better of the two options is probably the latter one which is entitled " trust department as agent for the public entity." However, certain circumstances and fact patterns may make another title more likely to achieve the desired results. The answer to this question can only be conclusively answered on an individual factual basis because the answer depends on what is being titled and the objective to be accomplished. Changing these factors may change the wording that is necessary to accomplish such objective.

Finally, you ask whether a repurchase agreement between a local bank and an out-of-state bank complies with K.S.A. 1990 Supp. 12-1675. K.S.A. 1990 Supp. 12-1675(4) requires that the repurchase agreements be entered into with commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices that are located at least within the state of Kansas. Therefore, we do not believe that this statute would permit the funds being invested with an out-of-state bank.

Therefore, in conclusion, it is our opinion that the bank trust department is not a separate legal entity from the bank. K.S.A. 1990 Supp. 12-1675(4) allows a governmental entity to

enter into a repurchase agreement as long as the funds are invested in a bank that has an office in at least one of the applicable sites listed in the statute.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelman
Assistant Attorney General

RTS:JLM:MJS:bas