

FILE

Subject

Banking
Deposit Public Money



Copy to

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

July 16, 1974

Opinion No. 74-224

Donald E. DeShazer
Assistant State Treasurer
State Capitol
Topeka, Kansas 66612

Dear Mr. DeShazer:

You advise that the Legislative Post Audit Division has just completed its 1973 annual audit of the office of the State Treasurer. The Division has requested that you secure the opinion of this office regarding the manner of crediting interest income earned upon moneys deposited in the Attorney General's antitrust suspense fund (no. 095-082). You advise that when this account was established as a custodial account, consisting of "receipts from antitrust proceedings," the State Treasurer entered into a custodial account contract with the Merchants National Bank, Topeka, Kansas, as a thirty-day self-renewable account, the interest to be paid at a rate prescribed by Regulation Q or K.S.A. 75-4210.

Since the inception of this program, the Treasurer has been crediting the interest income to the state general fund (0104-670-3010). This practice was believed to have a twofold justification, first, that the moneys in the account were deemed to be state funds until disbursement, and secondly, that the costs incurred by your office by the use of personnel to deposit, invest, and maintain necessary accounting records of the activities of the account warranted the crediting of interest earned on funds therein to the state general fund.

K.S.A. 75-715 states in pertinent part thus:

"In any civil action prosecuted by the attorney general for violation of any federal or state anti-trust law or laws in which moneys are recovered by him on behalf of the state or any political subdivision thereof, or on behalf of any persons, firms, corporations, or associations, or any combination or class thereof, by reason of any judgment, consent

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decree, or settlement, the attorney general is authorized and directed to deposit ten percent (10%) of any such moneys so recovered with the state treasurer in a special fund hereby created to be known as the 'attorney general's antitrust revolving fund.' . . .
The balance of such recovered moneys shall be deposited with the state treasurer in a special fund, or funds, as may be required by the attorney general, and shall be disbursed by the director of accounts and reports to the beneficiaries thereof upon order of the attorney general. [Emphasis supplied.]

The account involved here is not the revolving fund, but rather the fund in which the balance of the recovered funds are deposited. These funds are not placed in the state treasury, but only deposited with the state treasurer in a special fund or funds. As to these funds, the state treasurer acts merely as custodian of funds recovered by the Attorney General

"on behalf of the state or any political subdivision thereof, or on behalf of any persons, firms, corporations, or associations, or any combination or class thereof"

The moneys properly belong to those in whose behalf they are recovered. At 45 Am.Jur.2d, Interest and Usury, § 39, the writer states the general rule thus:

"One receiving money which he is obligated to pay to a third person is not liable to the latter for interest if, being under no obligation to do so, he does not put the money out at interest; but if he does so, the interest is considered to have the same ownership as the principal by which it is produced." [Footnotes omitted.]

Thus, interest earned on recovered moneys held in the Attorney General's antitrust suspense fund may not be credited to the state general fund, except for that portion thereof attributable to and earned on money recovered on behalf of the State of Kansas. All other interest must be credited to the beneficiaries of recovered moneys held in the fund, as their interests may appear.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Keith Weltmer, Legislative Post Audit