



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 24, 1977

ATTORNEY GENERAL OPINION NO. 77- 28

Mr. Michael H. Haas
Sheridan County Attorney
Sheridan County Courthouse
Hoxie, Kansas 67740

Re: Counties--Idle Funds--Investment

Synopsis: If a commercial bank located in a county offers to accept deposits of idle county funds in time deposit, open accounts or certificates of deposit at an interest rate equal to or greater than the 91-day United States treasury bill rate or the maximum rate permitted by applicable law or regulation, whichever is lower, said county may not invest its idle funds in such deposits in banks located outside said county. The county may solicit and accept competitive bids on the deposit of idle county funds, although any bank which offers to pay an interest rate greater than that described above must secure the investment by the deposit of securities equal to one hundred percent of the deposit, rather than by securities equal to seventy percent thereof which is otherwise required.

* * *

Dear Mr. Haas:

You inquire concerning K.S.A. 12-1675, as amended by ch. 79, L. 1976.

Prior to the 1976 amendments, we had occasion to interpret the investment authorities of counties under K.S.A. 12-1675. In Opinion No. 75-388, a copy of which is enclosed, I concluded that the statute did not preempt the field, and that counties could utilize their statutory home rule powers under K.S.A 19-101a

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et seq. to supplant or augment that statutory investment authority. Because of its particular pertinence to the interpretation of county home powers in general, and its relevance to the history of the 1976 amendments affecting county investment authority, I quote the last paragraph of that opinion in full:

"The investment of idle county monies being a purely local matter, it is an appropriate subject for the exercise of those powers of local legislation and administration vested in counties under K.S.A. 19-101a. The exercise of that power is 'subject to all acts of the legislature which apply uniformly to all counties.' K.S.A. 1974 Supp. 12-1675 as amended is a statutory grant of authority which applies equally to all counties. A major purpose of K.S.A. 19-101a is to permit counties to provide for themselves legislative authority in regard to local matters where no statutory authority exists or where the existing statutory authority is inadequate to permit the county to achieve its desired object and purpose. Clearly, in my judgment, it is an appropriate exercise of county home rule authority for the board of county commissioners to augment and supplement the statutory investment authority provided by K.S.A. 1974 Supp. 12-1675 by additional authority fashioned by ordinary resolution adopted pursuant to K.S.A. 19-101a(b), and that the county may lawfully enlarge its authority to include the purchase of certificates of deposit for periods both shorter and longer than those for which statutory authority presently exists. The interest limitations of K.S.A. 1974 Supp. 12-1676 as amended apply by its terms to only those investments authorized by statute, and not to those additional investments which may be authorized by county resolution."

The 1976 legislature responded to this opinion in several respects. First, the legislature preempted the exercise of county home rule powers in the investment of idle moneys by providing that counties may invest "only" in those investments authorized by K.S.A. 1976

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Supp. 12-1675. Secondly, the payment of interest rates on time deposit, open accounts and certificates of deposit was addressed with some particularity. If the county is investing in time deposit, open accounts or certificates of deposit, the county must do so in commercial banks or trust companies located in the county if such banks or trust companies will

"make such deposits available to the investing governmental unit at interest rates equal to or greater than the average yield before taxes received on ninety-one day United States treasury bills as determined by the federal reserve banks, as fiscal agents of the United States, at its most recent public offering of such bills prior to the inception of such deposit contract or the maximum rates such banks or trust companies may pay on such deposits under applicable law or regulation, whichever is lower. . . ."

The county may invest in time deposit, open accounts or certificates of deposit in commercial banks or trust companies outside the county if and only if those institutions within the county will not make such deposits available at interest rates equal to or greater than that prescribed above. Thus, if banks in the county offer to receive such deposits at interest rates equal to or above this prescribed rate, the county may not seek higher rates of interest in institutions outside the county.

You ask whether the county commissioners may request the banking institutions in the county to submit bids on the interest rates which will be paid on such deposits, and award all or any part of the deposit of idle county monies, as they choose, to the highest bidder, although a commercial bank submits a lower bid which quotes an interest rate equal to or higher than the 91-day treasury note rate. There is no prohibition against requesting and receiving bids on interest rates to be paid on investments of idle county monies. However, the utility of doing so may be diminished somewhat by a 1976 amendment to K.S.A. 9-1402, which amendment provides thus:

"Any state or national bank or trust company which has agreed to pay a rate of interest upon moneys deposited pursuant to K.S.A. 12-1675, and any amendments thereto, greater

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than the average yield before taxes received on ninety-one (91) day United States treasury bills as determined by the federal reserve banks . . . shall deposit and maintain for the benefit of the governing body of the municipal or quasi-municipal corporation, . . . securities of a type described in this section in the amount of one hundred percent (100%) of such deposit." [Emphasis supplied.]

Otherwise, securities in the amount of only seventy percent of the deposits are required. There is, however, no prohibition against competitive bidding for deposits of idle county funds, although the incentive of banks to respond to such solicitations may be diminished by the greater security deposit required for investments on which interest rates greater than the 91-day treasury bill rate are paid.

I hope this clarification will be helpful to you and to the commissioners.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure