



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

February 11, 1980

ATTORNEY GENERAL OPINION NO. 80- 35

Mr. Roy P. Britton
State Bank Commissioner
818 Kansas Avenue
Topeka, Kansas 66612

Re: Banks and Banking -- Deposit of Public Moneys --
Security for Deposits

Synopsis: A state or national bank or trust company is limited by K.S.A. 1979 Supp. 9-1402 as to the amount of securities which may be pledged to secure the deposit of public moneys by a municipal or quasi-municipal corporation. Pursuant to that statute, the amount of securities so pledged must equal 70% of the amount of moneys deposited, unless such bank or trust company has agreed to pay interest on such deposit at a rate in excess of the 91 day U.S. treasury bill rate; in the latter instance, the amount of securities pledged must equal 100% of the amount of moneys deposited. Pledging of securities in a manner which contravenes these requirements constitutes the giving of a preference to a depositor within the proscription of K.S.A. 9-1113.

Therefore, in investing its idle funds, the Board of Trustees of Barton County Community College has no authority to compel a bank or trust company to pledge securities to secure the deposit of such funds in an amount which would contravene the provisions of K.S.A. 1979 Supp. 9-1402.

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Dear Mr. Britton:

In your letter of January 29, 1980, you requested our opinion as to whether it is appropriate for the Board of Trustees of Barton County Community College to require that the deposit of its funds with a state or national bank or trust company be secured by the pledge of securities in an amount equal to one hundred percent (100%) of such deposit.

Pursuant to K.S.A. 1979 Supp. 12-1675, the board of trustees of a community junior college is authorized to invest any of its "moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other act of the legislature." The balance of this statute prescribes the permissible means for investing such moneys, including deposits in certain interest-bearing accounts at commercial banks or trust companies.

With respect to the provision of security for deposits with banks or trust companies, two Kansas statutes have relevance. K.S.A. 9-1113 provides as follows:

"No bank or trust company shall give any preference to any depositor either by pledging any of its assets as collateral security or in any other manner, except that the deposit of public moneys and funds in the custody of the federal court or any of its officers may be secured as elsewhere provided in this act or as required by the federal court."

As can be seen from the foregoing, a bank or trust company is prohibited from giving preference to any of its depositors by pledging any of its assets as security, except that the deposit of public moneys may be secured to the extent authorized by law. The extent of such security is prescribed by K.S.A. 1979 Supp. 9-1402, which concerns the deposit of public moneys of any "municipal or quasi-municipal corporation of the State of Kansas." It should be noted that the definition of "quasi-municipal corporation" in K.S.A. 1979 Supp. 9-701(n) is of such scope as to include community junior colleges.

K.S.A. 1979 Supp. 9-1402 prescribes essentially three ways deposits of such public moneys may be secured: (1) By personal bond in double the amount of the deposit; (2) by corporate surety bond in an amount equal to the amount of deposit; and (3) by pledge of the bank's securities. It is with the latter that we are concerned here, and 9-1402 provides in pertinent part:

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"Any state or national bank or trust company may deposit and maintain for the benefit of the governing body of the municipal or quasi-municipal corporation in the manner hereinafter provided in this act, securities in the amount of seventy percent (70%) of the total deposits at any given time"

Following the foregoing provision, the statute enumerates the types of securities which may be pledged. There also is included in 9-1402 the following qualification of the above-quoted requirement:

"Any state or national bank or trust company which has agreed to pay a rate of interest upon moneys deposited pursuant [sic] to K.S.A. 1978 Supp. 12-1675, and any amendments thereto, greater than the average yield before taxes received on ninety-one (91) 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, and depositing securities to secure payment of such deposit, shall deposit and maintain for the benefit of the governing body of the municipal or quasi-municipal corporation, in the manner as hereinafter provided in this act, securities of a type described in this section in the amount of one hundred percent (100%) of such deposit."

Considering the foregoing statutory provisions, it is apparent that, unless a bank or trust company has agreed to pay a rate of interest greater than the average yield before taxes on ninety-one (91) day U.S. treasury bills, such bank or trust company is precluded by law from pledging securities in an amount greater than seventy percent (70%) of the amount of public moneys deposited with such bank or trust company by a municipal or quasi-municipal corporation. Only when interest is paid on such moneys at a rate in excess of the ninety-one (91) day treasury bill rate is such bank or trust company permitted to exceed such seventy percent (70%) limitation; in that instance, the securities pledged must equal one hundred percent (100%) of the amount of public moneys deposited. Were a bank or trust company to secure deposits of public moneys of a municipal or quasi-municipal corporation in a manner that contravenes these requirements, it would constitute giving a preference to a depositor within the proscription of K.S.A. 9-1113.

Therefore, if idle funds of Barton County Community College are to be deposited with a bank or trust company, and security for such deposits

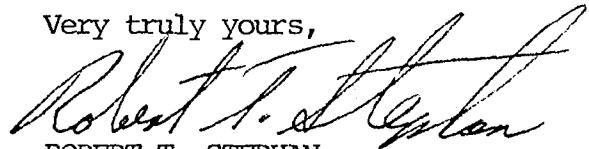
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is to be provided by pledging of securities by such bank or trust company, such security must be in compliance with the requirements set forth above, and the junior college's board of trustees has no authority to compel such bank or trust company to provide such security in a manner which contravenes such requirements.

In conclusion, it should be noted that the provisions of K.S.A. 1979 Supp. 9-1402 apply to both national and state banks and trust companies, with the authority for including national banks within the purview of this statute being provided by 12 U.S.C.A. §90, which states in pertinent part:

"Any national banking association may, upon the deposit with it of any funds by any State or political subdivision thereof or any agency or other governmental instrumentality of one or more States or political subdivisions thereof, including any officer, employee, or agent thereof in his official capacity, give security for the safekeeping and prompt payment of the funds so deposited to the same extent and of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:may