



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

November 13, 1980

ATTORNEY GENERAL OPINION NO. - 247

Mr. Thomas A. Becher
Comptroller
Adjutant General Division
Topeka, Kansas 66601

Re: Militia, Defense and Public Safety -- Armories --
Deposit of Unit Funds

Synopsis: The Adjutant General may authorize the deposit of funds received under K.S.A. 1979 Supp. 48-309 in savings accounts. However, this may only be accomplished after the amendment or repeal of adjutant general regulation KNGR 230-21(g) (2). Cited herein: K.S.A. 1979 Supp. 48-309, K.S.A. 77-201, Second, and KNGR 230-21(g) (2).

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Dear Mr. Becher:

You inquire whether the Adjutant General may authorize Army and Air National Guard units to maintain certain surplus funds in savings accounts. You state that a unit wishes to place funds currently in a checking account into a savings account. These funds were received by the unit under the provisions of K.S.A. 1979 Supp. 48-309, which states in pertinent part thus:

"Revenues received by any army or air national guard unit from other sources, including but not limited to armory rentals, vending proceeds, non-federal annual camp dividends, gifts and donations,

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may be expended for maintenance, equipment or morale and welfare purposes in accordance with rules and regulations adopted by the adjutant general, and each army or air national guard unit shall deposit all funds received under this section in specified banks designated by the pooled money investment board and shall account for the receipt and expenditure of such funds as the adjutant general may direct." (Emphasis added.)

We assume that the surplus funds you inquire about were also received under this statute as funds of this type are the only ones mentioned in your inquiry.

State agencies have only those powers delegated by law, however, the language emphasized above does not specify whether the deposit of funds shall be in savings or checking accounts. The statute requires only a deposit in a bank designated by the pooled money investment board. K.S.A. 77-201, Second, requires that "[W]ords and phrases shall be construed according to the context and the approved usage of the language. . . ." "Deposit" is defined in Black's Law Dictionary 394, 395 (5th Ed. 1979) as:

"The act of placing money in the custody of a bank or banker for safety or convenience, to be withdrawn at the will of the depositor or under rules and regulations agreed on. Also, the money so deposited, or the credit which the depositor receives for it. Deposit, according to its commonly accepted and generally understood meaning among bankers and by the public, includes not only deposits payable on demand and subject to check, but deposits not subject to check, for which certificates, whether interest-bearing or not, may be issued, payable on demand, or on certain notice, or at a fixed future time."

Absent some evidence of legislative intent to restrict the meaning of the term "deposit" to checking accounts only, the breadth of this definition indicates that either account, checking or savings, meets the statutory requirement.

K.S.A. 1979 Supp. 48-309 also requires that each unit "shall account for the receipt and expenditure of such funds as the adjutant general may direct." Because of this language it is necessary to regard the

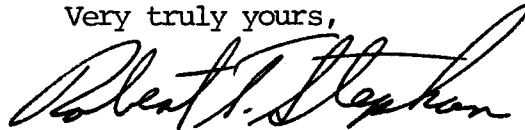
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directions of the adjutant general in this matter as binding. One such direction is KNGR 230-21(g) (2), which states:

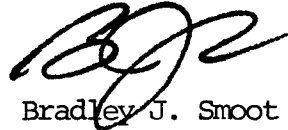
"All receipts and expenditures will be processed utilizing checks deposited to or drawn on the appropriate accounts. Cash transactions are not authorized."

Hence, before savings accounts could be used, it would be necessary to amend this regulation. In summary, the Adjutant General may authorize the deposit of unit funds received under K.S.A. 1979 Supp. 48-309 in savings accounts. However, this may only be accomplished after the amendment or repeal of KNGR 230-21(g) (2).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:may