



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 25, 1981

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

ATTORNEY GENERAL OPINION NO. 81- 53

Mr. Wayne Probasco
Probasco & Buck
708 Merchants Tower
Topeka, Kansas 66612

Re: Cities and Municipalities--School Districts--
Investment of Public Moneys

Synopsis: A school district may make deposits of its idle funds pursuant to K.S.A. 1980 Supp. 12-1675(b) in a detached auxiliary banking service facility operating by virtue of K.S.A. 1980 Supp. 9-1111. The presence of such a facility in the district satisfies the requirement of K.S.A. 1980 Supp. 12-1675(b) that the deposits be made in a bank "located" in the governmental unit. However, the bank is located in the district only for the limited purposes set forth by K.S.A. 1980 Supp. 9-1111, and the district may not transact business of a type not authorized thereby. Cited herein: K.S.A. 1980 Supp. 9-701, 9-1111, K.S.A. 9-1402, K.S.A. 1980 Supp. 12-1675.

* * *

Dear Mr. Probasco:

As attorney for Unified School District No. 437 (Washburn Rural), you request the opinion of this office on a matter involving the construction to be given to K.S.A. 1980 Supp. 12-1675. That statute, which regulates the investment of idle funds by governmental units such as school districts, contains language which raises questions when

Mr. Wayne Probasco
Page Two
February 25, 1981

considered with other statutes, most notably those dealing with the location in which a bank may do business. It is for the purpose of resolving these questions that you presently seek our opinion.

As way of background, you inform us that the district is currently the site of construction of two different banking facilities owned by banks whose main office is located outside the district. These facilities, in keeping with Kansas law, are not "branch banks," but instead are "detached auxiliary banking service facilities" as that term is used by K.S.A. 1980 Supp. 9-1111. The distinction is important, as will be seen below, but for now it is enough to say that board members indicate that they either have been or will be approached by representatives of these banks concerning the deposit of idle district funds.

The portion of K.S.A. 1980 Supp. 12-1675 which speaks to the deposit of idle district funds states [at subsection (b)] that such moneys may be placed in "time deposit, open accounts or certificates of deposit . . . in commercial banks or trust companies located in such investing governmental unit" (Emphasis added). While the section also provides that the moneys may be invested in institutions outside the governmental unit if those within cannot or will not provide a specified return, for the purposes of this opinion we will assume that such is not the case. Accordingly, the issue is one of whether the presence of a detached service facility within the district means that the bank is "located" within the district for purposes of K.S.A. 1980 Supp. 12-1675(b), even though the bank's main place of business, as specified by its certificate of authority, is outside the district's boundaries.

Prior to 1973, Kansas banks were limited in their operations to having, in addition to their main office, an attached auxiliary teller office and one detached auxiliary teller office which had to be within 2,600 feet of the principal facility. Branch banks, offices, agencies or places of business were forbidden, and the services of the detached office were limited to "receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange and receiving payments payable at the bank." K.S.A. 1972 Supp. 9-1111. As such, the statute represented but a very modest advance from the original statute of 1947, which allowed banks to conduct no business at all outside of the office identified in the certificate of authority.

The changes made in 1973 were the result of recommendations made by the Special Committee on Banking Structure to the legislature that year. 1972 Kansas Legislative Interim Studies, Proposal No. 33 (Banking Structure). Again, the proposals were modest in their scope, and retained as their basic premise the ban on branch banking, at least

Mr. Wayne Probasco
Page Three
February 25, 1981

under that name. For the first time, however, banks were allowed to have detached auxiliary service facilities more than 2,600 feet from the main office, although they first had to establish or operate one such facility within that distance. A number of other restrictions were also suggested, chief among which was the requirement that the unit must be within the corporate limits of the same city as the bank itself. These recommendations were adopted by the legislature in 1973 House Bill No. 1017, and now appear at K.S.A. 1980 Supp. 9-1111(c), (d), and (e).

The full legislature, however, did not accept one of the committee's proposals which would have allowed "full service" detached auxiliary facilities, once the procedures governing the granting of new bank charters were followed. The measure which eventually passed into law retained the limits which the statute had previously set out for the "close-in" detached facilities, plus some additions. As it now reads, the statute limits "extended" detached facilities to

"rental of safety deposit boxes, receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, issuing and redeeming obligations of the treasury of the United States of America in denominations of one thousand dollars (\$1,000) or less and receiving payments payable at the bank." (Emphasis added.)

While the retention of these restrictions has caused considerable controversy on the question of detached facilities becoming involved in the process of making loans, for this opinion it is sufficient to note that detached facilities of the type involved here can receive "deposits of every kind and nature." It is our opinion that this would include time deposit, open accounts and certificates of deposit of the type mentioned in K.S.A. 1980 Supp. 12-1675(b), especially since these terms are also included in the definition section of the Kansas Banking Code, of which K.S.A. 1980 Supp. 9-1111 is a part. See K.S.A. 1980 Supp. 9-701(i), (j). It is furthermore our opinion that the giving by the bank of the securities required by K.S.A. 9-1402 for the receipt of district funds would be a part of the deposit process, and, as far as the district is concerned, would not require any transactions at the main bank site outside of the district's boundaries.

In our opinion, the above grant of power, limited though it may be, does authorize an entity such as a school district to place its idle funds in a detached auxiliary service facility located within the district. It would be overly technical to say that a bank is not really

Mr. Wayne Probasco
Page Four
February 25, 1981

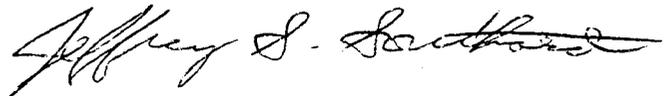
"located" at any location but its main office, in light of the wording of K.S.A. 1980 Supp. 9-1111, which does allow the transaction of some forms of business at places other than there, despite the continuing ban on fully autonomous branch facilities. Additionally, such a construction would limit the effectiveness of the 1973 revisions to that statute, which were designed in part to allow banks to construct detached facilities in areas of rapid population growth and business expansion. 1972 Interim Studies, p. 37. If, as here, such expansion overlapped into a school district which had heretofore been outside the city limits, a detached facility constructed there should be able to operate (within the limits of its authorized functions), as if the bank itself is situated there.

In conclusion, a school district may make deposits of its idle funds pursuant to K.S.A. 1980 Supp. 12-1675(b) in a detached auxiliary banking service facility operating by virtue of K.S.A. 1980 Supp. 9-1111. The presence of such a facility in the district satisfies the requirement of K.S.A. 1980 Supp. 12-1675(b) that the deposits be made in a bank "located" in the governmental unit. However, the bank is located in the district only for the limited purposes set forth by K.S.A. 1980 Supp. 9-1111, and the district may not transact business of a type not authorized thereby.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:phf