



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

May 13, 1981

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

ATTORNEY GENERAL OPINION NO. 81-108

Mr. James E. Taylor  
316 East Third  
Sharon Springs, Kansas 67758

Re: Banks and Banking--Deposit of Public Moneys--  
Reduction of Security During Peak Deposits

Synopsis: Pursuant to K.S.A. 9-1403, the designation of a specific "period of peak deposits" is permissible only where such period occurs at "tax paying time" or "tax distributing time." Cited herein: K.S.A. 1980 Supp. 9-1402, K.S.A. 9-1403, K.S.A. 1980 Supp. 12-1678a, and 1981 House Bill No. 2235.

\*

\*

\*

Dear Mr. Taylor:

As attorney for Wallace County Unified School District No. 241, you request our interpretation of K.S.A. 9-1403. Specifically, you ask whether the school district may, under the aforesaid statute, designate the following dates as "periods of peak deposits": the 60-day period beginning January 1st of each year; the 30-day period beginning April 1st of each year; and the 30-day period beginning June 1st of each year.

K.S.A. 9-1403 provides as follows:

"During the periods of peak deposits occurring at tax paying time and tax distributing time and continuing for a period

Mr. James E. Taylor  
Page Two  
May 13, 1981

of not to exceed sixty continuous days at any given time and not to exceed one hundred twenty days in any calendar year the amount of security for the deposit of public moneys as herein elsewhere required shall be reduced by one-half in amount thereof.

"The provisions of this section shall apply only to the deposits of all municipal and quasi-municipal corporations, but the custodian of the funds of each of such municipal or quasi-municipal corporations together with an officer of the depository state or national bank or trust company shall designate in writing the beginning of each such sixty-day period, and a copy thereof, fully executed, shall be kept on file in the office of the governing body of such municipal or quasi-municipal corporation and in the files of such bank or trust company."  
(Emphasis added.)

As the underscored portion of the above-quoted statute indicates, during periods of peak deposits occurring at tax distributing time, and continuing for a period not to exceed 60 continuous days at any given time and not to exceed 120 days in any calendar year, the security requirements (prescribed by K.S.A. 1980 Supp. 9-1402) relating to the deposit of school district funds are reduced by one-half the prescribed amount. However, it is clear that the reduction in security requirements occurs only if the written designation, prescribed by the second paragraph of the statute, is fully executed and kept on file. In our judgment, the provisions relating to a written designation is mandatory, since strict compliance therewith is essential to the preservation and protection of school district funds on deposit at state and national banks. See Paul v. City of Manhattan, 212 Kan. 381, 385 (1973).

In addition, from our reading of the statute, we believe that the legislature intended that the requirement of a written designation apply to any period of 60 days or lesser period of time. In our judgment, the reference in the second paragraph of the statute to "each such sixty-day period" should be harmonized with the first paragraph of the statute, which refers to peak periods "not to exceed sixty continuous days at any given time." Since, as stated above, the reduced security requirements may have an adverse impact upon the protection of public funds deposited at state and national banks, it is our belief that the legislature intended to require a written designation of any peak period.

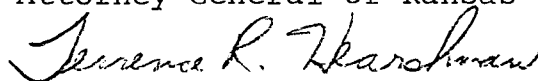
Mr. James E. Taylor  
Page Three  
May 13, 1981

In regard to the designation of the above-referenced dates as "peak periods" for the school district, the same is permissible under K.S.A. 9-1403 if said dates coincide with periods of peak deposits occurring at "tax distributing time." Tax distribution dates for the school district will be determined pursuant to K.S.A. 1980 Supp. 12-1678a, as amended by Section 1 of 1981 House Bill No. 2235. Since such dates are variable if a request for advancement is made by the school district, or if an agreement between the county and the school district prescribes an alternative to the statutory method, it is not possible to reach a definitive conclusion regarding the validity of the subject designation without additional information. However, it can be stated that designation of the above-referenced dates does not violate either the 60-day limitation or the 120-day limitation prescribed by K.S.A. 9-1403, and if such dates coincide with peak distribution periods, designation of such periods would be lawful.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm