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ATTORNEY GENERAL OPINION NO. 81- 195

The Honorable Joan Finney
State Treasurer
535 Kansas Avenue
BUILDING MAIL

Re: State Departments; Public Officers, Employees --
State Moneys -- Investment of Custodial Accounts
Containing Surplus Reserves

Synopsis: Funds generated in the operation of college and university dormitories for which revenue bonds remain outstanding are to be placed in custodial accounts and invested by the pooled money investment board as "surplus reserves," unless otherwise required by bond agreements. Income in the form of interest on such accounts is to be credited to the custodial account generating such income and is not to be placed in the state general fund, unless otherwise required by bond agreements. Cited herein: K.S.A. 75-4201, 75-4210a, 75-4251, 75-4252, 75-4253, 75-4255, 76-161, 76-6a01, 76-6a05, 76-6a12, 76-6a15, 76-6a21.

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Dear Mrs. Finney:

Previously, you requested our opinion on whether certain dormitory suspense accounts under the control of the Kansas Board of Regents could be considered custodial accounts within the meaning of the State Moneys Law, K.S.A. 75-4201 et seq. On July 6, 1981, this office issued Kansas Attorney General Opinion No. 81-154, concluding as follows:

"Student rentals and fees collected pursuant to K.S.A. 76-6a05 and delivered to the custody of the State Treasurer pursuant to K.S.A. 76-6a06 are custodial moneys within

the meaning of the State Moneys Law, K.S.A. 75-4201 et seq. As such, these moneys are to be placed in custodial bank accounts arranged for by the Pooled Money Investment Board pursuant to K.S.A. 75-4213."

At the time such opinion was requested, you also inquired regarding any special procedures that are to be followed in handling such custodial moneys. Without discussing the myriad of administrative decisions resulting from the designation of custodial accounts, we focus on the primary legal issue for resolution, namely, the treatment of interest and investment income derived from moneys contained in such custodial accounts.

As noted in Opinion No. 81-154, the moneys in question are "state moneys" governed by the State Moneys Law (Id. at 2, 3) and are collected and deposited in accord with K.S.A. 76-6a01 et seq. A section of this law, K.S.A. 76-6a05, provides in pertinent part for the use of rentals and boarding fees collected, as follows:

"The amount of such rents shall be continued to be charged and collected from students who shall room in such dormitory until sufficient in the aggregate has been realized therefrom to pay the total cost of construction and equipment of such dormitory and interest thereon together with the cost of maintenance and operation thereof.

"When the full amount of the costs of construction and equipment of such dormitory, with interest thereon, has been paid, the board may reduce such rents, but no such reduction shall be made therein until such full amount has been paid. The board may pledge the net income of any such dormitory and of any other dormitory at the same institution to the non-profit corporation which constructed such dormitory for the payment of the cost of construction and equipment and the interest thereon."

Many of the dormitories at state educational institutions of the Board of Regents were constructed and financed in whole or in part with proceeds from the sale of revenue bonds. Such bonds were issued by the authority of K.S.A. 76-6a12 et seq. (L. 1947, ch. 407). K.S.A. 76-6a15 authorizes the Board of Regents to pledge either the "gross or net income and revenues

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of such building" to the payment of such bonds. Such authorization corresponds to the powers granted in K.S.A. 76-6a05, quoted above.

In addition, K.S.A. 76-6a21 provides as follows for the disposition of revenues collected from student dormitories financed through revenue bonds. That section reads:

"That all income and revenues derived from the operation of a building or buildings under the provisions of this act shall be deposited monthly in a bank, banks, or other depositories designated by the board to be applied solely to pay the reasonable cost of operating and maintaining such building, and the principal and interest and reserve fund requirements on the bonds issued hereunder. As principal and interest on such bonds become due from time to time, and not less than fifteen days prior to the payment date thereof, there shall be transmitted to the paying agent for the bonds, money from said fund in an amount sufficient to pay the principal or interest so falling due. Said fund and the money therein is hereby irrevocably pledged to such purposes."

Hence, all income and revenues deposited in the custodial bank accounts as designated herein above, remain on deposit until transferred to the paying agent or until used to pay operating and maintenance expenses as authorized by K.S.A. 76-6a05. Between the time these moneys are received by the state agency and deposited in the custodial accounts and the time these moneys are expended, such moneys are "currently surplus reserve funds" or "surplus reserves" as these terms are used in K.S.A. 75-4252. That section provides:

"Whenever any state agency has issued bonds, and there exists a sinking fund or other reserve fund in connection therewith, and such sinking fund or other reserve fund contains any moneys not immediately needed for payment of the obligations of such sinking fund or other reserve fund, such amounts not so immediately needed are referred to in this act as "currently surplus reserve funds" or "surplus reserves." Whenever surplus reserves exist and investment thereof is not specifically prohibited by the statute authorizing the bond issue, or the trust agreement, indenture or resolution under which the bonds are issued,

then the surplus reserves shall be invested as provided in this act, subject only to any limitations contained in the applicable bond statute, trust agreement; indenture and resolution, or any of them."

K.S.A. 75-4253 provides guidance for the investment of revenues so collected held by a state agency prior to their disposition as provided above. This section states:

"Whenever any state agency or authority has issued any bonds in connection with which there exists surplus proceeds or surplus reserves, the pooled money investment board shall have management responsibility to invest the same as required by this act, unless the applicable bond statute, trust agreement, indenture or resolution requires a different management responsibility, in which case the person or agency so specified to have such management responsibility shall invest such surplus proceeds or surplus reserves as provided in this act."

Hence, the pooled money investment board is responsible to invest moneys in such accounts, unless otherwise provided in the bond agreements. The remaining issue is which fund is to be credited with the income from the investment of the dormitory income, while these funds await expenditure as provided by bond agreement, and as further required for operation and maintenance.

K.S.A. 75-4210a provides the general rule for the deposit of interest from accounts containing state money, as follows:

"Any moneys received from interest earned on state moneys shall be credited to the state general fund, unless required by law, contract or bequest to be credited to a fund other than the state general fund."

However, interest derived from the investment of "surplus reserves" shall be considered income of the fund having such surplus proceeds or surplus reserves. K.S.A. 75-4255. Hence, unless otherwise specifically provided by law, trust agreement or indenture (see K.S.A. 75-4252), investment income of the fund containing revenues pledged to retire revenue bonds on university or college dormitories is income of such fund. The phrase "income of the fund" indicates that such income is to be credited to said fund and not the general fund.

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The investment options available to the pooled money investment board are governed by the act of which 75-4253 and 75-4255 are an integral part. See L. 1973, ch. 359, now K.S.A. 75-4251 et seq.

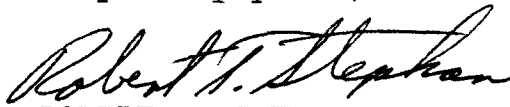
We note, in passing, K.S.A. 76-161, a statute designating a dormitory operating fund, which provides as follows:

"The state board of regents is hereby authorized and directed to create a dormitory operating fund at each of the educational institutions owning and operating dormitories; this fund to be derived from income of said dormitories after the deduction of all necessary expenses of upkeep, maintenance and repairs. The board of regents shall pay the accumulations of each dormitory operating fund into the state treasury each month."

This statute is the last remaining section of an act authorizing the construction of student dormitories. L. 1921, ch. 33. The other sections of that 1921 law have now been repealed. This provision has no application to dormitories authorized by K.S.A. 76-6a01 et seq.

Therefore, it is our opinion that funds generated in the operation of college and university dormitories for which revenue bonds remain outstanding are to be placed in custodial accounts and invested by the pooled money investment board as "surplus reserves," unless otherwise required by bond agreements. Income in the form of interest on such accounts is to be credited to the custodial account generating such income and is not to be placed in the general fund, unless otherwise required by the bond agreements.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

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