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August 25, 1981

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ATTORNEY GENERAL OPINION NO. 81-201

Bill Hanzlick, Director
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P. O. Box 54A
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Pratt, Kansas 67124

Re: State Departments; Public Officers, Employees --
State Moneys -- Forestry, Fish and Game Commission
Fee Fund

Synopsis: Moneys deposited in the state treasury and credited to the "forestry, fish and game commission fee fund" are not custodial moneys within the meaning of the State Moneys Law, K.S.A. 75-4201 et seq. Interest earned on such moneys must be credited to the state general fund, pursuant to the provisions of K.S.A. 75-4210a. Cited herein: K.S.A. 1980 Supp. 2-205; K.S.A. 2-2609, 8-267; K.S.A. 1980 Supp. 44-712; K.S.A. 49-420, 65-423, 72-6110, 74-3304, 75-3615, 75-3712; K.S.A. 1980 Supp. 75-4201; K.S.A. 75-4202, 75-4210a, 75-4252, 75-4255, 76-6a05, 76-6a06.

* * *

Dear Mr. Hanzlick:

You request our interpretation of the State Moneys Law, K.S.A. 1980 Supp. 75-4201 et seq. Specifically, you ask whether moneys deposited to the credit of the "forestry, fish and game commission fee fund" (hereinafter referred to as the "fee fund") are required to be segregated from other state bank accounts, and whether the interest earned on such moneys is required to be credited to the fee fund.

The fee fund is established by K.S.A. 74-3304, which statute provides as follows:

"All moneys received from licenses to hunt, fish, trap or otherwise capture, kill or deal in any wild game, game birds or other birds, fur-bearing animals, or the pelts thereof, fish or allied recreational pursuits, now or hereafter provided for by law, together with all moneys on deposit to the credit of the forestry, fish and game commission and to the fish and game department shall be paid into the state treasury and shall be deposited to the credit of the forestry, fish and game commission fee fund and the same are hereby appropriated for the use and purposes of said commission as provided by law. And all costs and expenses incurred by the commission in carrying out the purposes provided for in this act, in the conduct of its department, and in acquiring title to lands and rights therein or thereon, or waters or water rights, and for keeping, improving and maintaining the same for the uses as provided by law, shall be defrayed out of the said forestry, fish and game commission fund: Provided, however, That in no event shall said commission create any indebtedness or obligation of any nature whatsoever exceeding the surplus in said fund over and above the amount budgeted by the said commission for the proper conduct of its department: Provided, That no funds or moneys derived from sale of said licenses hereinbefore mentioned, or from any other source, shall be used for any other purpose than the administration of the forestry, fish and game commission as provided in this act."

The State Moneys Law provides that the state treasurer must deposit certain state moneys, referred to as "custodial moneys," in "custodial accounts." K.S.A. 75-4202. The term "custodial moneys" is defined as "state moneys deposited with the treasurer which, in the written opinion of the attorney general, are required by contract, bequest or law to be segregated from other bank accounts." K.S.A. 1980 Supp. 75-4201(f).

Since moneys in the fee fund are generated from the issuance of state licenses, and are not the subject of a "contract" or "bequest," said moneys are custodial, under the above definition, only if they are required by law to be segregated from other bank accounts. Although K.S.A. 74-3304 sets forth the uses which can be made of fee fund moneys, it does not require that such moneys be segregated from other state bank accounts, and we are unaware of any other statute which imposes such a

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requirement. In our judgment, a segregation requirement cannot be implied from the designation of uses and purposes set forth in the statute, since such a construction would have the effect of requiring segregated bank accounts for a myriad of other state funds which are subject to statutory restrictions as to use. See, e.g., K.S.A. 8-267 (state safety fund), 65-423 (medical facilities project fund), 49-420 (mined-land conservation and reclamation fee fund), 75-3712 (state emergency fund), 75-3615 (state office building operating fund), 72-6110 (tuition grant discontinued attendance fund), and 2-2609 (Wheat Commission fund).

Generally, when the legislature has required segregation of funds, it has done so in unequivocal language. See, e.g., K.S.A. 1980 Supp. 44-712(a) (employment security fund), 2-205 (state fair fee fund), and K.S.A. 76-6a06 (dormitory suspense accounts). In our opinion, K.S.A. 74-3304 does not require that fee fund moneys be segregated from other state bank accounts, and such moneys are not therefore, custodial moneys under the State Moneys Law.

In regard to your question concerning the crediting of interest earned on fee fund moneys, it should be noted that K.S.A. 75-4210a provides 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."

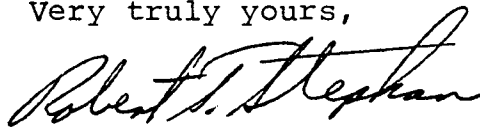
Since fee fund moneys are "state moneys," as that term is defined in K.S.A. 1980 Supp. 75-4201(e), and we are unaware of any law which requires interest earned on such moneys to be credited to the fee fund, the above-quoted statute requires that interest earned on the subject moneys be credited to the state general fund. In this regard, it should be noted that K.S.A. 74-3304 requires only that funds or moneys derived from the sale of licenses or from any other source be used for administration of the fish and game commission, and does not provide that moneys (i.e., interest) derived from the investment of license fee revenues (or other revenues) be applied to such purpose.

Finally, it should be recognized that the above conclusions do not conflict in any way with Kansas Attorney General Opinion Nos. 81-154 and 81-195. In said opinions, we opined that student rentals and fees collected pursuant to K.S.A. 76-6a05 were "custodial moneys," that such moneys were to be placed in custodial accounts, and that income in the form of interest

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on such accounts was to be credited to the account and was not to be placed in the state general fund. The characteristics of the "dormitory suspense accounts" involved in the prior opinions which mandated such treatment were as follows: 1) The statute establishing the fund (K.S.A. 76-6a06) specifically provided that the state treasurer was to act as the custodian of the moneys and that the moneys were not to be placed in the state treasury; 2) the moneys involved were "currently surplus reserve funds" or "surplus reserves" as those terms are used in K.S.A. 75-4252; and 3) the funds involved were subject to K.S.A. 75-4255, which statute requires that interest from investment of "surplus reserves" be considered income of the fund having such "surplus reserves." Since the forestry, fish and game commission fee fund does not possess any of these characteristics, the conclusions set forth above (relative to said fund) are not inconsistent with the prior opinions.

Very truly yours,



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Attorney General of Kansas



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