

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81- 215

Carl R. Sandstrom
Assistant Bank Commissioner
Banking Department
Suite 600, 818 Kansas Avenue
Topeka, Kansas

Re: Probate Code--Provisions Applicable To All Estates--
Corporate Fiduciaries

Synopsis: K.S.A. 59-1701, as amended by Section 1 of Chapter 226 of the 1981 Session Laws of Kansas, does not authorize a bank or other corporation, organized under the laws of, and having a principal place of business in, another state, to act as a trustee in the state of Kansas with respect to the issuance of industrial revenue bonds by a Kansas municipality. Cited herein: K.S.A. 1980 Supp. 59-103; K.S.A. 59-1701; L.1981, Ch. 226, §1.

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Dear Mr. Sandstrom:

You request our opinion as to whether K.S.A. 59-1701, as amended by Section 1 of Chapter 226 of the 1981 Session Laws of Kansas, authorizes a bank or other corporation, organized under the laws of, and having a principal place of business in, another state, to act as a trustee in the state of Kansas with respect to the issuance of industrial revenue bonds by a Kansas municipality. Said statute, which was enacted as part of the 1939 Probate Code and which has been amended on two occasions, provides as follows:

"(a) No bank or other corporation shall be appointed or authorized directly or indirectly to act as a fiduciary in this state, except:

"(1) A bank or other corporation organized under the laws of, and having its principal place of business in, this state;

"(2) a national bank located in this state;

"(3) a bank or other corporation organized under the laws of, and having its principal place of business in, another state which permits a bank or other corporation which is similarly organized in this state to act in a like fiduciary capacity in the other state under similar conditions;

"(4) a national bank located in another state which permits a national bank located in this state to act in a like fiduciary capacity in the other state under similar conditions; or

"(5) as provided in K.S.A. 59-1707 and 59-1708 and amendments thereto.

"(b) No officer, employee or agent of a bank or corporation which is not authorized to act as a fiduciary in this state shall be permitted to act as a fiduciary, whether such officer, employee or agent is a resident or a nonresident of this state, when in fact such officer, employee or agent is acting as a fiduciary on behalf of such bank or corporation.

"(c) No bank or other corporation shall be appointed guardian of the person of a ward."
(Emphasis added.)

Prior to the 1981 amendment, K.S.A. 59-1701 provided as follows:

"No bank or other corporation, unless it is organized under the laws of and has its principal place of business in this state, or is a national bank located in this state, shall be appointed or authorized directly or indirectly to act as a fiduciary in this state, except as provided in K.S.A. 59-1707 and 59-1708, and amendments thereto and no officer, employee or agent of such bank or corporation

shall be permitted to act as a fiduciary in this state, whether such officer, employee or agent is a resident or a nonresident of this state, when in fact such officer, employee or agent is acting as such fiduciary on behalf of such bank or corporation; nor shall any bank or other corporation be appointed guardian of the person of a ward."

Your question is whether the "reciprocity" provision of the amended statute, K.S.A. 59-1701(a)(3), applies to "foreign" banks and corporations which desire to act as trustees with respect to the issuance of industrial revenue bonds by Kansas municipalities.

The Kansas Supreme Court has stated that all provisions of the probate code must be construed together and, if possible, harmonized in giving them force and effect. In re Estate of Diebolt, 187 Kan. 2, 14 (1960). In this regard, it should be noted that subsection (a) of K.S.A. 1980 Supp. 59-103, which concerns the scope of Chapter 59 of Kansas Statutes Annotated, provides as follows:

"(a) Chapter 59 of the Kansas Statutes Annotated may be used:

"(1) To admit last wills and testaments to probate.

"(2) To grant and revoke letters testamentary and of administration.

"(3) To direct and control the official acts of executors and administrators, to settle their accounts, and to order the distribution of estates.

"(4) To administer partnership estates as provided in this act.

"(5) To determine the heirs, devisees, and legatees of decedents.

"(6) To appoint and remove guardians and conservators for minors and incapacitated persons, to make all necessary orders relating to their estates, to direct and control the official acts of such guardians and conservators and to settle their accounts.

"(7) To supervise the administration of trusts and powers created by wills admitted to probate, and trusts and powers created by written instruments

other than by wills in favor of persons subject to conservatorship; to appoint and remove trustees for such trusts, to make all necessary orders relating to such trust estates, to direct and control the official acts of such trustees, and to settle their accounts.

"(8) To appoint and remove trustees of estates of convicts imprisoned in the penitentiary under sentence of imprisonment for life, to make all necessary orders relating to their estates, to direct and control the official acts of such trustees, and to settle their accounts.

"(9) To hold hearings respecting mentally ill persons, and to order their referral for treatment."
(Emphasis added.)

As is readily apparent, there is no indication in the above-quoted statute that the probate code has any application to trusts created with respect to the issuance of industrial revenue bonds by municipalities. The underscored portion of statute, above, seems to restrict application of the probate code to trusts and powers created by wills admitted to probate, and to trusts and powers created by written instruments other than wills in favor of persons subject to a conservatorship. Article 16 of Chapter 59 of Kansas Statutes Annotated, which relates to accounting of trustees, also seems to indicate that a trust arising out of this issuance of industrial revenue bonds is not a testamentary or nontestamentary trust to which the probate code applies.

Additional support for the conclusion that K.S.A. 59-1701, as amended by L.1981, Ch. 226, §1, cannot be construed as authorizing a foreign bank or corporation to act as a trustee with respect to the issuance of industrial revenue bonds by a Kansas municipality, can be found in In re Estate of Lowe, 155 Kan. 679 (1942). In said case, which construed the provisions of K.S.A. 59-1701 prior to amendment of the statute, the Kansas Supreme Court stated as follows:

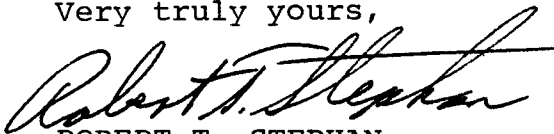
"Before concluding we feel constrained to say that it is a matter of common knowledge that in the campaign of public education as to the urgent need for a new probate code which culminated in the enactment of 1939, the Kansas legislature, backed by the moral force of the leaders of the Kansas bar, knew exactly what it was about when section 131 [K.S.A. 59-1701]

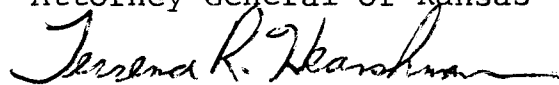
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was written into the bill and enacted into law. It was intended to put an end for good and all to the practice of letting foreign corporations serve as fiduciaries of the estates of Kansas citizens, and that legislative intention was within its competence absolutely." 155 Kan. at. 688.

The underscored portion of the above quotation indicates that, prior to amendment, K.S.A. 59-1701 had no application except as to foreign corporations serving as fiduciaries of the estates of Kansas citizens. Our examination of the probate code has failed to reveal any statute which concerns trusts arising out of the issuance of industrial revenue bonds. In our judgment, the "reciprocity" provision set forth in K.S.A. 59-1701(a)(3) [L.1981, Ch. 226, §1], relates only to foreign banks and corporations serving as fiduciaries with respect to estates and trusts within the scope of the probate code, and has no application whatsoever to trusts created with respect to the issuance of industrial revenue bonds. Therefore, it is our conclusion that K.S.A. 59-1701, as amended by Section 1 of Chapter 226 of the 1981 Session Laws of Kansas, does not authorize a bank or other corporation, organized under the laws of, and having a principal place of business in, another state, to act as a trustee in the state of Kansas with respect to the issuance of industrial revenue bonds by a Kansas municipality.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm