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ATTORNEY GENERAL OPINION NO. 82-142

James R. Cobler
Director of Accounts and Reports
Department of Administration
First Floor - State Office Building
Topeka, Kansas 66612

Re: Cities and Municipalities -- Investment of Idle Funds -- Prospective Application of 1982 Amendments

Synopsis: Amendments made to K.S.A. 1981 Supp. 12-1675 by 1982 Substitute for House Bill No. 2139, which takes effect on July 1, 1982, have prospective application only. The limitations imposed by these amendments on the investment of idle funds by units of local government are applicable to such investments made on and after July 1, 1982, and do not affect investments which were lawfully made prior to that time, even though the contractually prescribed periods of time for which the funds were invested extend beyond July 1, 1982. Cited herein: K.S.A. 1981 Supp. 12-1675 (as amended by section 6 of 1982 Substitute for House Bill No. 2139).

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Dear Mr. Cobler:

You have requested our opinion regarding certain provisions of 1982 Substitute for House Bill No. 2139, which becomes effective on July 1, 1982. This bill effects various changes in a number of statutes pertaining to the deposit and investment of public moneys by units of local government. Of specific concern are certain changes made in the requirements of K.S.A. 1981 Supp. 12-1675 by section 6 of the bill.

K.S.A. 1981 Supp. 12-1675 provides the general investment authority for units of local government. The 1982 amendments to this statute limit the authority of a unit of local government to make certain investments, by requiring that such investments be made only with the appropriately located home office of a particular financial institution. In the interest of brevity, we shall not detail these new requirements. Suffice it to state that this "home office" requirement varies for the different types of authorized investments and as to the particular type of financial institution involved.

It is this new "home office" limitation which has prompted your inquiry. On several prior occasions this office has concluded that, under K.S.A. 1981 Supp. 12-1675 as it now exists, a financial institution satisfied the location requirements of this statute if a "branch facility" of such institution met these requirements. For example, in Attorney General Opinion No. 81-211, we concluded, as follows:

> "Where a bank's main facility is not located within the boundaries of a school district, but such facility and all or part of the school district are located in the same county and the bank's detached auxiliary banking services facility is located within the school district . . . the bank is eligible, by virtue of the location of its detached auxiliary banking services facility within the school district, to receive deposits of the school district's idle funds pursuant to K.S.A. 1980 Supp. 12-1675(b) . . . ." Id. at Synopsis.

See, also, Attorney General Opinion Nos. 76-43 and 81-53.

Currently, therefore, where the "branch facility" of a qualified financial institution is located in accordance with the requirements of K.S.A. 1981 Supp. 12-1675, a local unit of government is authorized to invest its idle funds with such financial institution, and we understand that a number of units of local government presently have moneys invested under such authority. It is our further impression that many of these investments are pursuant to contractual arrangements whereby withdrawal of the funds, prior to the end of the period for which the funds were invested, will result in a substantial loss of interest and, in some cases, reduction in the principal amount of the investment. Apparently, a substantial number of these types of investments have maturity dates extending beyond July 1 of this year, the effective date of House Bill No. 2139, and you have inquired as to the effect of the new "home office" limitation in this bill on these investments.

In our judgment, the provisions of House Bill No. 2139 do not affect the validity of these investments. As stated in State v. Hutchinson, 228 Kan. 279 (1980), "the general rule of statutory construction is that a statute will operate prospectively unless its language clearly indicates that the legislature intended that it operate retrospectively." Id. at 287, citing Nitchalls v. Williams, 225 Kan. 285 (1979), where the Court amplified this rule as follows:

> "A number of cases declare that the preceding rule mandates that a statute is not to be given retrospective application unless the intent of the legislature is 'clearly' and 'unequivocally' expressed. Lyon v. Wilson, 201 Kan. 768, 443 P.2d 314 (1968); In re Estate of Brown, 168 Kan. 612, 215 P.2d 203 (1950); International Mortgage Trust Co. v. Henry, 139 Kan. 154, 30 P.2d 311 (1934); Barrett v. Montgomery County, 109 Kan. 685, 201 Pac. 1098 (1921); Douglas County v. Woodward, 73 Kan. 238, 84 Pac. 1028 (1906). This rule of statutory construction is normally applied when an amendment to an existing statute or a new statute is enacted which creates a new liability not existing before under the law or which changes the substantive rights of the parties. The rule has been applied to statutory changes affecting the contractual rights of parties under existing insurance policies. See, for example, Lightner v. Insurance Co., 97 Kan. 97, 154 Pac. 227 (1916), where a statute made a radical change in the law governing the forfeiture or cancellation of a life insurance policy. See also Bank Savings Life Ins. Co. v. Baker, 120 Kan. 756, 244 Pac. 862 (1926)." Id. at 290, 291.

Application of these well-established rules of construction to the situation posed by your inquiry compels the conclusion that the amendments to K.S.A. 1981 Supp. 12-1675, which take effect on July 1, 1982, have prospective application only. We have found no evidence that the legislature intended retrospective application of the new statutory requirements affecting investment of idle funds by units of local government. There is nothing to indicate that the legislature intended that these new provisions be applied so as to prematurely terminate investments which were lawfully made prior to these amendments becoming of force and effect. We have previously noted the adverse effect on investing governmental units of prematurely terminating investments made for contractually prescribed periods of time extending beyond the

effective date of House Bill No. 2139. Thus, a construction against the retrospective application of these amendments is particularly compelling in view of the detrimental effect such retrospective application would have on the contractual rights and liabilities of these investing governmental units.

Therefore, it is our opinion that amendments made to K.S.A. 1981 Supp. 12-1675 by 1982 Substitute for House Bill No. 2139, which takes effect on July 1, 1982, have prospective application only. The limitations imposed by these amendments on the investment of idle funds by units of local government are applicable to such investments made on and after July 1, 1982, and do not affect investments which were lawfully made prior to that time, even though the contractually prescribed periods of time for which the funds were invested extend beyond July 1, 1982.

Before concluding, one caveat is appropriate. Even though we have determined that the amendments to K.S.A. 1981 Supp. 12-1675 apply only to investments made on or after July 1, 1982, and that they have no application to prior investments extending beyond that date, our opinion should not be construed as suggesting that these prior investments can be renewed, extended or "rolled over" beyond the original period of investment without compliance with the new requirements. In our judgment, any such renewal, extension or "roll over" must be regarded as a new investment which is subject to the limitations imposed by House Bill No. 2139.

Very truly yours,

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