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ATTORNEY GENERAL OPINION NO. 83- 55

James R. Cobler, Director
Division of Accounts and Reports
Department of Administration
State Office Building
Topeka, Kansas 66612-1574

Re: Banks and Banking--Banking Code; Deposit of Public
Moneys--Security for Deposits of Public Funds

Synopsis: Subsection (a) of K.S.A. 9-1403 provides that, during periods of peak deposits occurring at tax paying time and tax distributing time, the amount of security required by K.S.A. 9-1402 for deposits of public moneys in certain financial institutions shall be reduced by one-half of the required amount. Thus, during such periods of peak deposits, the amount of securities required to be deposited and maintained by a depository institution to secure a deposit of public moneys, where the depository institution has agreed to pay on such deposit a rate of interest greater than the average yield before taxes received on ninety-one day U.S. treasury bills, shall be no less than 50% of the amount of the deposit. Cited herein: K.S.A. 9-1402, 9-1403.

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Dear Mr. Cobler:

You have requested our opinion regarding certain provisions of K.S.A. 9-1402 and 9-1403, which concern the security requirements attending public funds deposited by local units of government with specified financial institutions.

Subsection (a) of K.S.A. 9-1402 provides as follows:

"Before any deposit of public moneys or funds shall be made by any municipal corporation or quasi-municipal corporation of the state of Kansas with any state or national bank or trust company or state or federally chartered savings and loan association, such municipal or quasi-municipal corporation shall obtain security for such deposit in one of the following manners prescribed by this section."

The subsequent subsections of this statute set forth the various methods of providing the appropriate security. Subsection (b) authorizes a personal bond of the financial institution, in double the amount of the deposit; subsection (c) permits the use of corporate surety bonds; and subsection (d) authorizes the financial institutions to "deposit, maintain, pledge and assign for the benefit" of the public depositor any of the securities specified in that subsection, where the market value of such securities is "no less than 70% of the total deposits at any given time." However, the method of providing security having pertinence to your inquiry is contained in subsection (f), which states:

"Any state or national bank or trust company or state or federally chartered savings and loan association which has agreed to pay a rate of interest upon moneys deposited pursuant to K.S.A. 12-1675, and any amendments thereto, greater than the average yield before taxes received on ninety-one day United States treasury bills as determined by the federal reserve banks as fiscal agents of the United States at its most recent public offering of such bills prior to the inception of such deposit contract, and depositing, pledging and assigning securities to secure payment of such deposit, shall deposit and maintain for the benefit of the governing body of the municipal corporation or quasi-municipal corporation, in the manner as provided in this act, securities of a type described in this section [the] market value of which is equal to no less than 100% of such deposit."

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K.S.A. 9-1403 also is concerned with security for deposits of public moneys, but its requirements are applicable only during "periods of peak deposits." This statute states:

"(a) During the periods of peak deposits occurring at tax paying time and tax distributing time and continuing for a period of not to exceed 60 continuous days at any given time and not to exceed 120 days in any calendar year the amount of security for the deposit of public moneys as required under K.S.A. 9-1402 and amendments thereto shall be reduced by 1/2 in amount thereof.

"(b) The provisions of this section shall apply only to the deposits of all municipal corporations and quasi-municipal corporations, but the custodian of the funds of each of such municipal corporations or quasi-municipal corporations together with an officer of the depository state or national bank or trust company or state or federally chartered savings and loan association 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 corporation or quasi-municipal corporation and in the files of such bank or trust company or such savings and loan association."

You inquire as to what effect the above-quoted provisions of K.S.A. 9-1403 have upon the requirements of K.S.A. 9-1402(f), and in order to explain the purpose of your question, you have hypothesized a factual context, as follows:

"Assume that, during the period of peak deposits designated in writing, \$200,000-- for which there is no FDIC or FSLIC in effect--is receiving a rate of interest greater than the average yield before taxes received on ninety-one day United States treasury bills."

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Based on these assumed facts, and in light of the pertinent statutory provisions noted above, you have asked whether the security required to be pledged is to have a value of \$200,000 or \$100,000.

The question you have raised is primarily one of statutory construction, and there are several rules enunciated by the Kansas Supreme Court which we believe to be of pertinence to this issue. Of principal significance is the following statement in Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357 (1978):

"The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. Easom v. Farmers Insurance Co., 221 Kan. 415, Syl. 2, 560 P.2d 117 (1977); Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1073 (1978); Brinkmeyer v. City of Wichita, 223 Kan. 393, 573 P.2d 1044 (1978)." 224 Kan. at 367.

The Court also has provided guidance in ascertaining the legislature's intent, and we believe the following statement of the Court to be of relevance here:

"A primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to the obvious purpose the court should follow the intent as expressed by the words used and is not warranted in looking beyond them in search of some other legislative purpose or extending the meaning beyond the plain terms of the Act. (Alter v. Johnson, 127 Kan. 443, 273 Pac. 474; Hand v. Board of Education, 198 Kan. 460, 426 P.2d 124; City of Overland Park v. Nikias, 209 Kan. 643, 498 P.2d 56; Hunter v. Haun, 210 Kan. 11, 499 P.2d 1087.)" City of Kiowa v. Central Telephone & Utilities Corporation, 213 Kan. 169, 176 (1973).

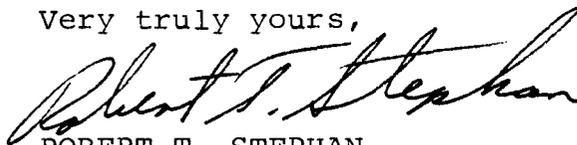
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With these principles in mind, we have considered the relevant statutory requirements. Accordingly, in our judgment, subsection (a) of K.S.A. 9-1403 is plain and unambiguous in providing that, during periods of peak deposits occurring at tax paying time and tax distributing time, the amount of security for the deposit of public moneys, as required by K.S.A. 9-1402, shall be reduced by one-half of the required amount. By the plain and ordinary sense of the language used in this provision, it would appear that this requirement is applicable to all the various methods of providing security for deposits of public moneys authorized by K.S.A. 9-1402. There is nothing in this provision indicating the legislature intended that the reduction in the amount of required security apply to less than all of the security requirements of K.S.A. 9-1402.

We also note that both of the pertinent statutes (9-1402 and 9-1403) were amended by the same act in 1982. (See L. 1982, ch. 52, §§2,3.) Hence, it cannot be assumed that the requirements of K.S.A. 9-1403 have been imposed without full legislative awareness of their scope and effect.

Therefore, it is our opinion that, during periods of peak deposits occurring at tax paying time and tax distributing time, the amount of securities required to be deposited and maintained by a depository institution to secure a deposit of public moneys, where the depository institution has agreed to pay on such deposit a rate of interest greater than the average yield before taxes received on ninety-one day U.S. treasury bills, shall be no less than 50% of the amount of the deposit. Thus, in answer to the specific question regarding your hypothetical fact situation, we believe that, during periods of peak deposits the value of the security required for the \$200,000 deposit may be not less than \$100,000.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

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