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ATTORNEY GENERAL OPINION NO. 83- 94

John A. O'Leary, Jr.
State Bank Commissioner
Suite 300
700 Jackson
Topeka, Kansas 66603

Re: State Departments; Public Officers, Employees --
State Moneys -- Active Accounts; Service Charges

Synopsis: K.S.A. 75-4202 requires that a bank having a state bank account must service such account without charge to the state or any of its agencies for the disbursement of moneys from such account pursuant to warrant, draft or check. This provision does not compel such bank to cash without charge to the person presenting it to the bank for payment a warrant, draft or check drawn by the state or any of its agencies upon the state treasury. Cited herein: K.S.A. 1982 Supp. 75-4201, K.S.A. 75-4202.

* * *

Dear Commissioner O'Leary:

On your behalf, Assistant Bank Commissioner Carl R. Sandstrom requested our opinion regarding certain provisions of K.S.A. 75-4202, which reads as follows:

"All state moneys and credits received by the treasurer shall be deposited daily in one or more active accounts or time deposit, open accounts except custodial moneys which shall be so deposited in custodial accounts. All disbursements shall be drawn from active accounts. All banks having a state bank account shall service all warrants, drafts or checks of the state or its agencies without charge."
(Emphasis added.)

The statutory language emphasized above has prompted your inquiry. In his letter, Mr. Sandstrom indicates that an attorney for a state agency believes this language "requires a bank having a state bank account to cash all warrants, drafts or checks of the state or its agencies without a charge to the person cashing the warrant, draft or check." On the other hand, Mr. Sandstrom notes that your office has "always interpreted the statute to prohibit such a bank from assessing a charge against the state (or agency) for servicing the state (or agency) account." In light of these differing interpretations, our opinion as to the correct construction of this statutory provision has been requested.

Although the request is not specific, from our understanding of the situation giving rise to your inquiry, we feel compelled to restrict our consideration and response to warrants, drafts, and checks drawn against the state treasury. The vast majority of state business transactions are handled in this fashion. On the other hand, many state agencies have and use special fee accounts at various local banks throughout the state. Consideration of whether these accounts must be serviced without charge may involve examination of agreements between the agencies and the banks as well as the Uniform Commercial Code. Since this latter category represents the exception, rather than the normal banking transaction, we have refrained from an interpretation of an issue which is both complex and apparently not in need of resolution.

K.S.A. 75-4202 has been discussed in several prior opinions of this office, although none of them address the precise question you have posed. However, in Attorney General Opinion No. 75-435, Attorney General Schneider inferentially construed the pertinent language consistent with the long-standing interpretation given it by your office. In that opinion, the question considered was "whether the statute by specifying 'service' without charge requires those banks handling such accounts to pay for the paper stock and printing of the state's warrants, drafts or checks." Id. at p. 1. In responding in the negative, the opinion stated, in part:

"The operative effect of the sentence in question appears to pivot upon the definition of the verb 'service,' which unfortunately is not provided for within the act itself. Absent such specific definition we necessarily resort to additional intrinsic aids to ascertain the exact meaning the Legislature intended this sentence to have. The adjective phrase 'of the state or its agencies' collectively modifies the terms 'warrants, drafts and checks.' The inference raised by this language is that

these instruments are possessions of the state. Webster's New Third International Dictionary (1966) defines 'service': to perform services for; to meet the needs of.' The logical corollary which follows then is that the instruments used by the state to draw on its account are processed or serviced by the bank for no charge. And, we do not believe therefore that by itself this sentence manifests any requirement that such instruments be provided as part of the free services." (Emphasis added.) Id. at 2.

The foregoing excerpt from the prior opinion, particularly the emphasized portion thereof, clearly indicates that the prior opinion was predicated on a belief that the pertinent statutory requirement has reference only to the servicing of a state bank account by the bank which has been awarded such account, without charge to the state or any of its agencies. We believe that to be the correct interpretation.

As in all instances of statutory construction, the intent of the legislature is controlling. This principle was expressed in Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357 (1978), as follows:

"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. Eason 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.

With this in mind, we note that neither of the alternative interpretations suggested in Mr. Sandstrom's letter is derived from a literal construction of the language in question. Based on the previously quoted analysis of the word "service" in Opinion No. 75-435, a literal interpretation of the pertinent language would require that a bank with a state bank account must "perform services for" or "meet the needs of" all state warrants, drafts and checks. It is clear, therefore, that a literal interpretation does not adequately disclose the legislative purpose underlying this statutory provision. Thus, we believe the following rules of construction enunciated in Brown v. Keill, 224 Kan. 195 (1978), are relevant here:

"In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested.

(State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. ¶10, 527 P.2d 1340 [1974].)

In order to ascertain the legislative intent, courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the literal import of words or phrases which conflict with the manifest purpose of the legislature. (Kansas Commission on Civil Rights v. Howard, 218 Kan. 248 Syl. ¶2, 544 P.2d 791 [1975].)" Id. at 200.

In accordance with the foregoing rules, we have attempted to determine the legislature's intent by considering the pertinent statutory provisions within the context of the remaining provisions of the statute, by construing the statute with the other sections of the State Moneys Law as statutes in pari materia and by considering the effect of the alternative constructions presented. As a consequence, we have concluded that, by the last sentence of K.S.A. 75-4202, the legislature intends that where a bank has been awarded a state bank account that is subject to warrant, draft or check, such bank shall service the account without charge to the state or any of its agencies for the issuance or making of any warrant, draft or check upon or against the account. In our judgment, such interpretation is consistent with the remaining provisions of K.S.A. 75-4202, which address the state treasurer's deposits in and disbursements from active accounts, and it also is in harmony with the overall purpose of the State Moneys Law. In our judgment, the legislature's manifest purpose underlying the State Moneys Law is to provide for the deposit of state moneys in various types of accounts in banks throughout the state, in a manner which will maximize the earning potential of such moneys without impeding the state's ability to satisfy its current obligations. Ancillary to such purpose, the State Moneys Law also has as its objective a definition of the respective obligations of such banks and

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the state or its agencies. Thus, to construe K.S.A. 75-4202 as requiring banks that are awarded state bank accounts to service such accounts without charge to the state or its agencies, can be viewed as a reasonable condition imposed by the legislature for a bank becoming a depository of state moneys.

Conversely, to construe this statute as requiring any such bank to cash for any person without charge a warrant, draft or check drawn by the state or any of its agencies upon the state treasury is not consonant with the previously stated purposes of the State Moneys Law. Rather than address the mutual obligations of the state or its agencies and banks having state bank accounts, such interpretation would establish rights of third parties who are in possession of warrants, drafts or checks drawn by the state or any of its agencies. We do not find any indication elsewhere in the State Moneys Law that the legislature intended by that statutory sequence to establish the rights of such third parties, particularly since they are not privy to the contractual arrangements made for the establishment of state bank accounts.

Finally, it is our understanding that the Pooled Money Investment Board, the state agency responsible for administering the State Moneys Law, has consistently construed the pertinent provisions of K.S.A. 75-4202 as requiring only that a bank having a state bank account must service such account without charge to the state or any of its agencies. In our judgment, deference must be given to that construction, since "an interpretation of state law by a state agency delegated the responsibility of enforcing that law, is entitled to great weight." Lincoln American Corp. v. Victory Life Insurance Co., 375 F. Supp. 112, 118 (D. Kan. 1974). See, also, Save Our Invaluable Land (SOIL), Inc. v. Needham, 542 F.2d 539, 542 (10th C.C.A. 1976).

In conclusion, therefore, it is our opinion that K.S.A. 75-4202 requires that a bank having a state bank account must service such account without charge to the state or any of its agencies for the disbursement of moneys from such account pursuant to warrant, draft or check. This provision does not compel such bank to cash without charge to the person presenting it to the bank for payment a warrant, draft or check drawn by the state or any of its agencies upon the state treasury.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General