



STATE OF KANSAS

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February 1, 1984

ATTORNEY GENERAL OPINION NO. 84- 6

The Honorable Joan Finney
Treasurer, State of Kansas
700 Harrison
Topeka, Kansas 66601

Re: State Departments -- State Moneys -- Deposit of
State Moneys; Use of Notes Representing Loans Under
the Federal Guaranteed Student Loan Program as
Securities Therefor

Synopsis: Pursuant to K.S.A. 75-4201 et seq., the Pooled Money
Investment Board may designate state or national banks
located in Kansas to receive active and inactive
accounts of state moneys. As provided in K.S.A. 75-
4218, all state bank accounts shall be secured by
pledge of securities, which are held by the state
treasurer, an approved Kansas bank or the federal
reserve bank in Kansas City, Missouri. The term
"securities" is defined at K.S.A. 1983 Supp. 75-4201(p)
to include [at paragraph (1)] obligations that are in-
sured as to principal and interest by the federal
government or any agency thereof. While the federal
Guaranteed Student Loan Program involves the partici-
pation of a guarantee agency which insures the repay-
ment of one hundred percent of the principal and inter-
est due on such loans which are not repaid, such an
agency is not an agency of the federal government.
Therefore, notes representing loans under the federal
Guaranteed Student Loan Program cannot be pledged as
securities to secure the deposit of state moneys.
Cited herein: K.S.A. 1983 Supp. 75-4201, 75-4208,
K.S.A. 75-4218, 20 U.S.C.A. §1071, 34 C.F.R. §§
682.100, 682.200, 682.400, 682.406.

* * *

Dear Mrs. Finney:

As Treasurer for the State of Kansas, you request our opinion

on a question concerning the deposit of state moneys in banks located in this state. Specifically, you refer us to K.S.A. 75-4201 et seq., which act provides the procedures for placing active and inactive state accounts in Kansas banks, both state and nationally chartered. In that banks which are selected by the Pooled Money Investment Board (which you, as State Treasurer, chair) must pledge securities to guarantee such deposits, a question has arisen as to whether certain types of notes fall under the definition of securities, and therefore qualify for the purpose of pledging. Before turning to the specifics of the instruments involved, it would be helpful to set out the pertinent statutes.

The Pooled Money Investment Board (Board) meets each July for the purpose of initiating the process of designating banks to receive accounts of active and inactive state moneys. (K.S.A. 1983 Supp. 75-4208). Those banks which are interested in obtaining such accounts may submit sealed proposals which are considered by the Board no later than September 1. At that time, awards of active and inactive accounts of state and special moneys are made, after which time each bank securing an account is notified of its award and "that the same is subject to approval of securities to be pledged as prescribed in the act." [K.S.A. 1983 Supp. 75-4208(c)].

Requirements for the pledging of securities are set out by K.S.A. 75-4218 as follows:

"(a) All state bank accounts shall be secured by pledge of securities as provided in this section.

(b) The bank receiving or having a state bank account shall deposit securities owned by it, in one of the following ways:

(1) Deposit with the treasurer.

(2) Deposit with a bank having adequate modern facilities for the safekeeping of securities and doing business in the state of Kansas, and which facilities shall have had the prior approval of the board. Any such bank receiving securities for safekeeping shall be liable to the state for any loss suffered by the state in the event such bank relinquishes the custody of any such securities contrary to the provisions of this act or rules and regulations adopted thereunder. No such deposit of securities shall be made in any facility owned or controlled directly or indirectly by the bank depositing the same.

(3) Deposit with the federal reserve bank of Kansas City, Missouri.

(4) Any combination of (1), (2) and (3)."

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"(e) Active accounts, time deposit, open ac-

counts, inactive accounts, fee agency accounts and custodial accounts shall be secured in an amount equal to seventy percent (70%) thereof, less so much of any such account as is protected by the federal deposit insurance corporation. Any agency responsible for a fee agency account shall transfer immediately all moneys not so secured to the state treasurer for deposit in the state treasury."

In turn, the term "securities" is defined by K.S.A. 1983 Supp. 75-4201(p) to include a variety of municipal bonds, revenue bonds, temporary notes and warrants, as well as any "[d]irect obligations of, or obligations that are insured as to principal and interest by, the United State government or any agency thereof."

The question you present concerns the possible use of notes which represent loans made under the Guaranteed Student Loan Program (GSLP) as securities for the purposes of the above statutes. In that you have provided us with a thorough and lengthy memorandum which sets forth the way in which the GSLP operates, accompanied by numerous attachments, we will not attempt to repeat everything that you have set out. However, in that the central issue presented by your request concerns the nature of such loans and the agencies which guarantee their repayment, some description of the program should be given.

The GSLP was created by Title IV, Part B of the Higher Education Act of 1965, as amended. (20 U.S.C.A. §1071 et seq.). The program makes low interest loans available to eligible students attending post-secondary schools, and functions as a "partnership" between four different entities: The federal government, by way of the Department of Education; private lenders; the educational institution; and a state guarantee agency or a private, non-profit organization which serves as guarantor. The lender advances its funds to the student, with the guaranty agency insuring against loss. 34 C.F.R. §682.100. The agency, in turn, is protected through agreements with the Department of Education, which result in full payment of default claims, as long as those claims are held to a rate of five percent or less a year. 34 C.F.R. §682.400, et seq. For higher default rates, compensation decreases to less than one hundred cents on the dollar. This has the effect of leaving the federal government ultimately responsible, although the loans themselves are not guaranteed by the government.

The Higher Education Assistance Foundation (HEAF) was incorporated in 1976 as a Minnesota non-profit corporation, and currently serves as a private guarantee agency for GSLP loans made in Kansas and four other states, plus the District of Columbia. HEAF has entered into a number of agreements with the Department of Education, copies of which you attached to your letter and memorandum, by which the agency may be reimbursed by the federal

government for those amounts on which it cannot collect. From the agreements, it is apparent that primary collection duties rest with the agency, which assists lenders with initial efforts to collect amounts in arrears and then undertakes its own efforts after it has had to pay out on a default. It is given an incentive to do so by the federal government, for if defaults rise to more than nine percent, only 80% of the amount paid to lenders is reimbursed to the agency. 34 C.F.R. 682.406.

From our review of the GSLP and the relationship between the federal government and HEAF, it is our opinion that the latter agency cannot be said to be an agency of the United States government. It was not created by the Department of Education, nor any other branch of the federal government, nor are its officers or directors appointed by or accountable to the federal government. While it must meet certain requirements in order to participate in the GSLP, participating educational institutions and lenders must do so as well. 34 C.F.R. §682.200 et seq. Therefore, in that it is HEAF which guaranteed 100 percent repayment to the lender, not the federal government, paper representing GSLP loans is not insured as to principal and interest by the federal government, but by a private agency, which may or may not receive full repayment depending on the percentage of defaulted loans. Accordingly, GSLP loan notes are not "securities" for the purposes of K.S.A. 1983 Supp. 75-4201(p), and may not be pledged by a bank for the receipt of state accounts. This situation is clearly distinguishable from that presented by a previous opinion of this office, No. 83-96, which involved the use as security of participation certificates (under K.S.A. 9-1402) issued by the Federal Home Loan Mortgage Corporation. There, the facts indicated that the FHLMC was a federally sponsored corporation, without the degree of independence possessed by HEAF.

In conclusion, pursuant to K.S.A. 75-4201 et seq., the Pooled Money Investment Board may designate state or national banks located in Kansas to receive active and inactive accounts of state moneys. As provided in K.S.A. 75-4218, all state bank accounts shall be secured by pledge of securities, which are held by the state treasurer, an approved Kansas bank or the federal reserve bank in Kansas City, Missouri. The term "securities" is defined at K.S.A. 1983 Supp 75-4201(p) to include [at paragraph (1)] obligations that are insured as to principal and interest by the federal government or any agency thereof. While the federal Guaranteed Student Loan Program involves the participation of a guarantee agency which insures the repayment of one hundred percent of the principal and interest due on such loans which are not repaid, such an agency is not an agency of the federal government. Therefore, notes representing loans under the federal Guaranteed Student Loan Program cannot be pledged as secur-

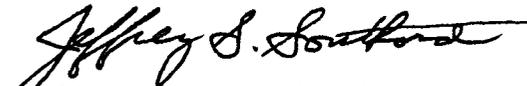
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ities to secure the deposit of state moneys.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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