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December 19, 1984

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ATTORNEY GENERAL OPINION NO. 84- 127

Eugene T. Barrett, Jr.
State Bank Commissioner
Kansas Banking Department
700 Jackson, Suite 300
Topeka, Kansas 66603

Re: Banks and Banking -- Banking Code; Deposit of Public
Moneys -- Securities for Deposits of Public Funds;
Revenue Bonds

Waters and Water Districts -- Rural Water Districts --
Issuance of Revenue Bonds

Synopsis: A bank may, for purposes of securing deposits of public funds, pledge revenue bonds issued by a quasi-municipal corporation, provided that approval is given by the state bank commissioner. An exception is made in the case of bonds secured by revenues of a utility which has been in operation less than three years, with the use of such bonds not permitted for pledging purposes. K.S.A. 9-1402(e)(1). Pursuant to a rule and regulation of the bank commissioner (K.A.R. 17-14-1), the term "utility" is defined using the definition found at K.S.A. 1983 Supp. 10-1201, which includes publicly-owned facilities of a revenue-producing character which supply water. In that a rural water district organized pursuant to K.S.A. 82a-612 et seq., is a quasi-municipal corporation which operates publicly-owned water supply facilities and may issue revenue bonds therefor, K.S.A. 9-1402(e) is applicable to those districts whose systems have not been in operation for three years. Cited herein: K.S.A. 9-1402, 10-101, K.S.A. 1983 Supp. 10-1201, K.S.A. 82a-616, K.S.A. 1983 Supp. 82a-619, 82a-625, K.A.R. 17-14-1.

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Dear Mr. Barrett:

As Commissioner for the Kansas Banking Department, you have requested our opinion concerning the applicability of certain statutes concerning revenue bonds. Specifically, you inquire whether K.S.A. 1983 Supp. 10-1201, which contains a definition of the terms "municipality," in determining whether revenue bonds of a rural water district are proper for pledging purposes under K.S.A. 9-1402.

K.S.A. 9-1402(d) authorizes a state or national bank to pledge a number of different instruments to the state or a local unit of government in return for a deposit of the governmental unit's funds. At subparagraph (5), the pledging of revenue bonds of any municipal or quasi-municipal corporation is permitted, provided the approval of your office is given. However, subsection (e) prohibits the pledging for security purposes of "bonds secured by revenues of a utility which has been in operation for less than three years." In that the bonds in question are issued by a rural water district and financed by the revenues of a water supply system which has been in operation less than three years, you inquire whether K.S.A. 9-1402(e) would operate to prohibit their use for pledging purposes.

In examining this question, we first note that additional language is found in a rule and regulation of the bank commissioner's office, K.A.R. 17-14-1. That regulation provides as follows:

"The commissioner may approve, as security for the deposit of public funds pursuant to K.S.A. 9-1402, revenue bonds of any municipal corporation or quasi-municipal corporation (except bonds issued under K.S.A. 12-1740 to 12-1749 and bonds secured by revenues of a utility which has been in operation for less than three years) subject to the following conditions:

"(A) Such bonds shall be issued pursuant to the laws of Kansas and the commissioner shall be furnished a copy of the approving legal opinion of a recognized bond attorney.

"(B) The rates, fees or charges fixed for the use of services rendered by a utility (as defined by K.S.A. 10-1201) shall be sufficient to pay the cost of operation, improvement, and maintenance of the utility, provide an adequate depreciation fund and pay the principal of and interest upon the bonds when due.

"(C) A copy of the report of audit required by K.S.A. 10-1208 shall be furnished to the commissioner within 30 days after completion of the same." (Emphasis added.)

The definition of "utility" which is incorporated into the rule and regulation by subsection (B) is found at K.S.A. 1983 Supp. 10-1201, which also includes definitions of "municipality" and "revenue bonds." The statute states:

"'Municipality' as used in this act means a municipality as defined in K.S.A. 10-101, and amendments thereto. 'Utility' as used in this act means any publicly owned utility, instrumentality or facility of a revenue producing character including but not limited to plants, facilities and instrumentalities for the purpose of supplying natural or manufactured gas, water or electric light and off-street parking facilities and sewage disposal plants, facilities and interceptor sewers. 'Revenue bonds' as used in this act means bonds issued by any municipality in this state to be paid exclusively from the revenue derived from the operation of a utility or from the proceeds of a countrywide retailers' sales tax imposed under subsection (b) of K.S.A. 12-195, and amendments thereto."

If reference is made in turn to K.S.A. 10-101, the definition of "municipality" includes "every corporation and quasi-corporation empowered to issue bonds in payment of which taxes may be levied." As K.S.A. 1983 Supp. 82a-619(b) prohibits a rural water district from levying "any taxes whatsoever," such districts are not municipalities for the purposes of K.S.A. 1983 Supp. 10-1201.

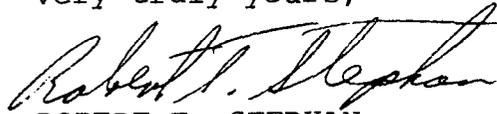
However, in our opinion it does not necessarily follow that because the bank department's definition of "utility" is taken from K.S.A. 1983 Supp. 10-1201, the definition of "municipality" contained therein must also be used. The pledging statute itself (K.S.A. 9-1402) speaks of the "revenue bonds of any municipal corporation or quasi-municipal corporation." It is beyond dispute that a rural water district is a quasi-municipal corporation (K.S.A. 82a-616) which is empowered to issue revenue bonds. K.S.A. 1983 Supp. 82a-625. Such a district operates water distribution systems which are of a revenue-producing character, and so comes under the definition of "utility" found in K.S.A. 10-1201, which definition has been adopted by reference in K.A.R. 17-14-1. Therefore, should the district's water distribution system have been in operation less than three years, under K.S.A. 9-1402(e)(1) its revenue bonds cannot be used by a state or national bank for pledging purposes.

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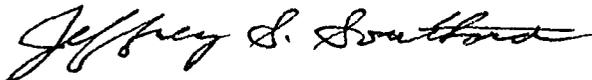
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In conclusion, a bank may, for purposes of securing deposits of public funds, pledge revenue bonds issued by a quasi-municipal corporation, provided that approval is given by the state bank commissioner. An exception is made in the case of bonds secured by revenues of a utility which has been in operation less than three years, with the use of such bonds not permitted for pledging purposes. K.S.A. 9-1402(e)(1). Pursuant to a rule and regulation of the bank commissioner (K.A.R. 17-14-1), the term "utility" is defined using the definition found at K.S.A. 1983 Supp. 10-1201, which includes publicly-owned facilities of a revenue-producing character which supply water. In that a rural water district organized pursuant to K.S.A. 82a-612 et seq., is a quasi-municipal corporation which operates publicly-owned water supply facilities and may issue revenue bonds therefor, K.S.A. 9-1402(e) is applicable to those districts whose systems have not been in operation for three years.

Very truly yours,



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Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw