



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

August 29, 1985

ATTORNEY GENERAL OPINION NO. 85-109

Charles A. Peckham
Rawlins County Attorney
Rawlins County Courthouse
Atwood, Kansas 67730

Re: Banks and Banking -- Banking Code; Deposit of
Public Moneys -- Securities for Deposits; Exemption
for Peak Deposit Periods

Synopsis: Subsection (a) of K.S.A. 1984 Supp. 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. 1984 Supp. 9-1402 (as amended by L. 1985, ch. 58) for deposits of public moneys in certain financial institutions, shall be reduced by one-half the usually required amount. While the statute requires a municipality to designate such periods, they may be for less than 60 days, and are subject to negotiation between the municipality and the financial institution receiving the deposit. The effect on K.S.A. 1984 Supp. 9-1403 of the 1985 amendment to K.S.A. 1984 Supp. 9-1402 (which increased the pledging requirement from 70% to 100% of the deposit) is to increase the amount of securities which must be pledged during peak deposit times from 35% to 50%. Cited herein: K.S.A. 1984 Supp. 9-1402, as amended by L. 1985, ch. 58, §§1 and 2; K.S.A. 1984 Supp. 9-1403; K.S.A. 9-1407; K.S.A. 1984 Supp. 12-678a; K.S.A. 79-2004; K.S.A. 79-2005, as amended by L. 1985, ch. 311, §10.

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Dear Mr. Peckham:

As County Attorney for Rawlins County, and on behalf of the Rawlins County Treasurer, you request our opinion concerning K.S.A. 1984 Supp. 9-1403. That statute permits a reduction in the amount of security which a bank or other financial institution must provide in order to obtain the deposit of public funds belonging to municipal or quasi-municipal corporations. Such reductions are to be made during certain designated "peak deposit periods," and you pose the following three questions: (1) is the designation of peak deposit periods mandatory by the county; (2) if such periods are required, is the length subject to the county's discretion, or must each period be 60 days in length; and (3) what is the effect of 1985 House Bill No. 2122 (L. 1985, ch. 58) upon the provisions of K.S.A. 1984 Supp. 9-1403?

The statute in question provides as follows:

"(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, trust company, state or federally chartered savings and loan association or federally chartered savings bank 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, trust company, savings and loan association or federally chartered savings bank."

The security requirements mentioned in subsection (a) appear in the provisions of K.S.A. 1984 Supp. 9-1402, as amended by L. 1985, ch. 58, §§1 and 2. As amended, the latter statute requires that a bank or other financial institution provide specified types of security [which types are defined by subsection (d)] equal to 100% of the amount of the deposits (formerly the amount had been set at 70%). The effect of K.S.A. 1984 Supp. 9-1403(a) is to reduce the amount of security required by a factor of one-half, so that only 50% of the amount of the deposits need be secured at certain times.

These times are identified by subsection (b) as "the periods of peak deposits occurring at tax paying time and tax distributing time." Reference to other statutes indicates that the times for the payment of real and personal property taxes are set at December 20 (K.S.A. 79-2004 and 79-2005, as amended by L. 1985, ch. 311, §10), while the times for the distribution of tax proceeds to municipalities and quasi-municipalities are established as January 20, March 5, May 20, July 20, September 5 and October 31, or at such other times as are mutually agreed to between a county and a municipality. K.S.A. 1984 Supp. 12-1678a. Given the directory language of subsection (a) of K.S.A. 1984 Supp. 9-1403 ("the amount of security . . . shall be reduced"), Rawlins County is in our opinion required to establish some time periods during which the security requirement is reduced. Therefore, the answer to your first inquiry is in the affirmative.

However, it is further our opinion that the reduction in security requirements occurs only if the written designation prescribed in subsection (b) is fully executed and kept on file by the county and financial institution. Since the reduced security requirements provide a lesser degree of protection for public funds, strict compliance with subsection (b) is mandatory for the preservation and protection of such moneys. See Paul v. City of Manhattan, 212 Kan. 381, 385 (1973).

In response to your second inquiry, we believe that a reading of the statute [at subsection (a)] indicates that the legislature intended that a peak deposit period could be designated as any period of 60 days or less. The limits which are imposed by the subsection (any one period is limited to a maximum of 60 days; total of all periods may not exceed 120 days during any calendar year) do not require that any single period extend for 60 days. Indeed, given the number of different times during the year when tax payments and tax distributions are made, such a reading would insure that some peak deposit periods could not be covered by the statute. Therefore, if the county and a financial institution desired to designate several peak deposit periods (i.e. six periods of 20 days each, four periods of 30 days, etc.), they would be free to do so.

Your third inquiry deals with the effect of 1985 House Bill No. 2122 (now at chapter 58 of the 1985 Session Laws) upon K.S.A. 1984 Supp. 9-1403. The statute itself is not amended by the bill, which instead increases the pledging requirements of K.S.A. 1984 Supp. 9-1402, as noted above, from 70% to 100%. Therefore, any effect upon K.S.A. 1984 Supp. 9-1403 is indirect, for while the 1/2 reduction of subsection (a) remains unchanged, the figure which must be consulted for reference has increased, so that an institution must now pledge 50%, rather than 35%, in securities in order to obtain a deposit of municipal or quasi-municipal funds. As you note, the pledging requirements are invoked only after the amount involved exceeds that figure which is automatically protected by federal insurance (i.e. \$100,000). This is explicitly set forth in K.S.A. 9-1407, as was noted in a prior opinion of this office, No. 83-55A.

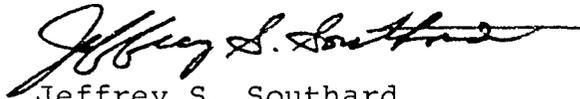
In conclusion, subsection (a) of K.S.A. 1984 Supp. 9-1403 provides that, during periods of peak deposits occurring at tax paying time and tax distributing time, the amount of security required by K.S.A. 1984 Supp. 9-1402 (as amended by L. 1985, ch. 58) for deposits of public moneys in certain financial institutions shall be reduced by one-half the usually required amount. While the statute requires a municipality to designate such periods, they may be for less than 60 days, and are subject to negotiation between the municipality and the financial institution receiving the deposit. The effect on K.S.A. 1984 Supp. 9-1403 of the 1985 amendment to K.S.A. 1984 Supp. 9-1402 (which increased the

pledging requirement from 70% to 100% of the amount of the deposit) is to increase the amount of securities which must be pledged during peak deposit times from 35% to 50% .

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw