



STATE OF KANSAS

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September 23, 1985

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ATTORNEY GENERAL OPINION NO. 85-128

Charles V. Hamm
Special Assistant to the Secretary
Department of Health and Environment
Forbes Field
Topeka, Kansas 66620

Re: State Departments; Public Officers and Employees --
State Moneys -- Interest Credited to General Fund;
Exceptions

State Departments; Public Officers and Employees --
Department of Health and Environment -- Crippled
and Chronically Ill Children; Advisory Commission;
Special Bequest Fund

Synopsis: Pursuant to Executive Reorganization Order No. 15
(L. 1977, ch. 283), the powers, duties, functions
and property of the Crippled Children's Commission
were transferred to the secretary of health and
environment. Such transfer included any moneys
which had been received by the commission from
private individuals in the form of gifts or
bequests. These moneys are now contained in a
special bequest fund, with expenditures made by the
secretary of health and environment subject to the
approval of the advisory commission for crippled
and chronically ill children. The corpus of any
private bequest may be invested by the state
treasurer pursuant to K.S.A. 75-4201 et seq.,
with any interest credited to the special bequest
fund, and not to the general fund of the state
(K.S.A. 75-4210a). Cited herein: K.S.A. 75-4201;
75-4210a; 75-4213; 75-5637; 75-5644; L. 1977, ch.
283.

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Dear Mr. Hamm:

As Special Assistant to the Secretary of the Department of Health and Environment, you request our opinion concerning the crediting of interest earned by a private bequest which was given to the state. Specifically, you inform us that in 1975 a Kansas woman bequeathed 30% of her estate to the Kansas Crippled Children's Commission. Following her death, the department of health and environment, as the successor agency to the commission, received the sum of \$136,097.34 in 1984. This amount has been invested by the state treasurer and produces interest. You believe that any interest so produced should be retained in the special bequest fund (K.S.A. 75-5644), rather than placed in the state general fund, and seek our concurrence.

You enclose a copy of the last will and testament which created the bequest, and we note that the language establishing the fund is quite specific that the annual interest produced by the principal is to be used for the care of needy children by the Kansas Crippled Children's Commission. Following an executive reorganization order in 1977 (codified at L. 1977, ch. 283), the commission was abolished, and "all of the powers, duties, functions, records, property and personnel" transferred to the department of health and environment. K.S.A. 75-5637. The secretary is assisted in his or her duties by the advisory commission for crippled and chronically ill children, which must approve any expenditures by the secretary from the "special bequest fund." K.S.A. 75-5644.

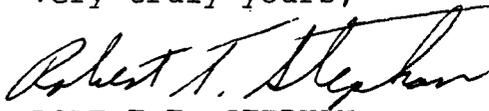
The corpus of the bequest in question is held by the state treasurer, and is invested pursuant to K.S.A. 75-4201 et seq. Although you assume in your letter that the money was placed in a custodial account, pursuant to K.S.A. 75-4213, we do not know this to be the case, and in fact would suspect the opposite to be true. "Custodial accounts" are defined by K.S.A. 75-4201(1) to be those state accounts which include "custodial moneys," which in turn are defined to be those moneys deposited with the treasurer which, "in the opinion of the attorney general, are required by contract, bequest or law to be segregated from other bank accounts." K.S.A. 75-4201(f). We are aware of no opinion of this office which has addressed the manner in which this bequest is to be deposited, nor do we believe that the will itself mandates that a separate fund be established. To be sure, the corpus must be kept inviolate, and invested in such a way that the amount of interest generated can be ascertained. Beyond this,

however, we do not believe that the bequest is required to be placed in a separate custodial account.

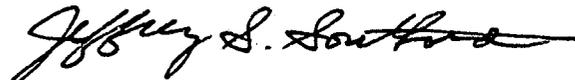
However the corpus of the bequest is invested, the interest which is earned should not, in our opinion, be credited to the state general fund, as is the general rule set forth in K.S.A. 75-4210a. Rather, as the statute notes, if a law, contract or bequest requires that the interest be credited to some other fund, the state treasurer must do so. Here, a special bequest fund exists which is administered by the secretary, with the advice of the commission, for the purposes which are set forth in the will of the testatrix. Accordingly, interest produced by the bequest should be credited to this special bequest fund in order to give full effect to the intent of the will.

In conclusion, pursuant to Executive Reorganization Order No. 15 (L. 1977, ch. 283), the powers, duties, functions and property of the Crippled Children's Commission were transferred to the secretary of health and environment. Such transfer included any moneys which had been received by the commission from private individuals in the form of gifts or bequests. These moneys are now contained in a special bequest fund, with expenditures made by the secretary of health and environment subject to the approval of the advisory commission for crippled and chronically ill children. The corpus of any private bequest may be invested by the state treasurer pursuant to K.S.A. 75-4201 et seq., with any interest credited to the special bequest fund, and not to the general fund of the state (K.S.A. 75-4210a).

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General