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ATTORNEY GENERAL OPINION NO. 86- 15

Robert J. Watson
Overland Park City Attorney
Justice Center
8500 Antioch
Overland Park, Kansas 66212

Re: Cities and Municipalities -- Miscellaneous
Provisions -- Investments of Public Moneys by
Governmental Subdivisions

Banks and Banking -- Banking Code; Deposit of
Public Moneys -- Designation of Depositories for
Municipal Funds

Synopsis: K.S.A. 1985 Supp. 9-1401 requires the governing body of any municipality to designate the financial institutions which may serve as depositories of its funds. Eligible institutions include those which have home offices located in the county in which all or part of the municipality is located, provided that satisfactory security can be obtained for the deposits. This statute applies to active funds, which are those of which the governing body makes immediate and regular use, and does not apply to moneys which are not immediately required for the purposes for which they were collected. Such "idle funds" may be invested only in the manner set out at subsection (b) of K.S.A. 1985 Supp. 12-1675. Provided such conditions are met, a municipality may invest its idle funds regardless of whether the particular financial institution has been designated as a depository under K.S.A. 1985 9-1401.

Cited herein: K.S.A. Supp. 1985 9-1401; 12-1675;
L. 1982, ch. 52, §1; L. 1983, ch. 47 §2.

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Dear Mr. Watson:

As City Attorney for the City of Overland Park, Kansas, you request our opinion on a question involving the deposit of funds held by the city. Specifically, you inquire whether the city may invest its idle funds in certificates of deposit and time certificates of deposit which are offered by banks and savings and loan associations that have not been designated as depositories pursuant to K.S.A. 1985 Supp. 9-1401. Such institutions have home offices located in Kansas counties which are adjacent to Johnson County, which contains the City of Overland Park.

As you note in your letter, this office has in prior opinions concluded that the investment of idle funds by Kansas municipalities is controlled by the provisions of K.S.A. 1985 Supp. 12-1675. "Idle funds" are defined by the statute as being those moneys which are not immediately required for the purposes for which they were collected or received. In Attorney General Opinion No. 83-88, we noted that a governing body is limited by statute to five clearly-defined types of investments for its idle funds, namely, the governing body's own temporary notes, time deposit, open accounts or certificates of deposit, time certificates of deposit, repurchase agreements, and United States treasury bills or notes. The statute is furthermore replete with qualifications as to when and where certain investments can be made. For example, before time certificates of deposit may be made with savings and loan associations which have home offices outside the governmental unit, it must be shown that there are no such associations located in the governmental unit or that such associations as are present will not provide a rate of return equal to or greater than one set out in a statutory formula. The same complex formula is provided in the case of commercial banks in regard to time deposit open accounts or certificates of deposit. K.S.A. 1985 Supp. 12-1675(b)(2) and (3).

As was noted in Opinion No. 83-88, a clear distinction exists between the methods of investment set out by the idle funds statute and those types of accounts intended to hold moneys to which the governing body has constant and immediate access. Such accounts for active funds include checking accounts, savings accounts, demand deposit accounts,

negotiable order of withdrawn (NOW) and money market deposit accounts. All of these accounts have no minimum maturity and allow withdrawal on demand without penalty. As the opinion noted, these factors have been seen as significant by judicial decisions and legal authorities on the question of whether such accounts are deposits or investments.

As it presently reads, K.S.A. 1985 Supp. 9-1401(a) states as follows:

"The governing body of any municipal corporation or quasi-municipal corporation shall designate by official action recorded upon its minutes the state and national banks, trust companies, state and federally chartered savings and loan association and federally chartered savings banks which shall serve as depositories of its funds and the officer and official having the custody of such funds shall not deposit such funds other than at such designated banks, trust companies, savings and loan associations and federally chartered savings banks. The state and national banks, trust companies, state and federally chartered savings and loan associations and federally chartered savings banks which have home offices located in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located shall be designated as such official depositories if the municipal or quasi-municipal corporation can obtain satisfactory security therefor."

As you note in your letter, it is significant that this subsection has never required banks to be designated as depositories as a precondition to the receipt of idle funds under K.S.A. 1985 12-1675. However, for the one year following July 1, 1982, until July 1, 1983, the statute did require savings and loan associations to have been designated as depositories before a municipality could invest idle funds in time certificates of deposit. However, on the latter date, such requirement was deleted so that the statute now requires neither banks or savings and loan associations to be designated as depositories before a municipality may invest

its idle funds in such institutions. L. 1982, ch. 52, §1; L. 1983, ch. 47, §2.

Further, a reading of subsection (a) of K.S.A. 1985 Supp. 9-1401 indicates that the legislature has imposed different standards for determining which institutions may receive active accounts and which may receive idle funds. Under the provisions of 9-1401(a), institutions which have home offices located in the county in which all or part of the municipality is located may be designated as official depositories, but only if the municipality can obtain satisfactory security for deposits. Subsection (b) of the same statute goes on to provide that if such satisfactory security cannot be obtained, the active accounts may be placed "elsewhere." As noted above, K.S.A. 1985 Supp. 12-1675 by way of contrast provides for the initial opportunity to be given only to institutions with home offices located in the investing governmental unit. In the case of Overland Park, the scope is thus narrowed from the entirety of Johnson County to the city itself. Further, provisions which are contained in the statute for alternative investments are based on the rate of return which the municipality may receive, rather than on the providing of adequate security.

Therefore, it is our opinion that investment of idle funds in instruments such as certificates of deposit and time certificates of deposit are not "deposits" within the meaning of the term as it is used in K.S.A. 1985 Supp. 9-1401, which is accordingly inapplicable to investment of idle funds. We agree with the conclusions reached in your letter as to the relationship of these statutes. However, we are unable to state with certainty whether the city may invest its idle funds in institutions which have home offices located in Kansas counties adjacent to Johnson County. Such investments would only be possible if all of the other provisions of the idle funds statute have been met, as previously noted.

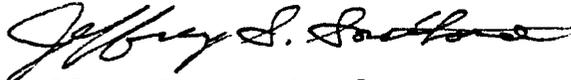
In conclusion, K.S.A. 1985 Supp. 9-1401 requires the governing body of any municipality to designate the financial institutions which may serve as depositories of its funds. Eligible institutions include those which have home offices located in the county in which all or part of the municipality is located, provided that satisfactory security can be obtained for the deposits. This statute applies to active funds, which are those of which the governing body makes immediate and regular use, and does not apply to moneys which are not immediately required for the purposes for which they were collected. Such "idle funds" may be invested only in the

manner set out at subsection (b) of K.S.A. 1985 Supp. 12-1675. Provided such conditions are met, a municipality may invest its idle funds regardless of whether the particular financial institution has been designated as a depository under K.S.A. 1985 9-1401.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw