



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 79

Joan Finney
State Treasurer
700 Harrison
P.O. Box 737
Topeka, Kansas 66601

Re: State Departments; Public Officers and Employees --
State Moneys -- Securing Deposits of State Moneys

Synopsis: K.S.A. 1986 Supp. 75-4218(b)(2), as amended, prohibits a bank from depositing its pledged securities for state bank accounts with a custodial bank which is owned by the same holding company as the depositing bank. Cited herein: K.S.A. 1986 Supp. 9-519 et seq.; 75-4218; L. 1967, ch. 447, § 7; L. 1968, ch. 75, § 2; L. 1973, ch. 63, § 2; L. 1975, ch. 453, § 10; L. 1985, ch. 58, § 3; 1987 House Bill No. 2498, as amended by House Committee.

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Dear Mrs. Finney:

As Treasurer of the State of Kansas, you request our opinion on a question concerning K.S.A. 1986 Supp. 75-4218(b)(2) and the deposit of pledged securities for state bank accounts. Specifically, you inquire as to whether this subsection permits a bank to deposit its pledged securities with a custodial bank which is owned by the same holding company as the depositing bank.

1987 House Bill No. 2498, as amended by the House Committee, states in part:

"Section 3 2. K.S.A. 1986 Supp. 75-4218 is hereby amended to read as follows: 75-4218. (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 or cause its affiliate bank, agent or trustee to deposit, securities owned by it, or by its agent or trustee holding securities on its behalf, or by its affiliate bank, in one of the following ways:

. . . .

"(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, ~~except that such deposit may be made in a facility owned by an affiliated bank controlled by the same bank holding company which controls the depositing bank. . . .~~" (Underlining in (b) denotes amendments to the law).

The last portion of this subsection, allowing deposit in a facility owned by an affiliated bank controlled by the same bank holding company which controls the depositing bank, was added and deleted in the 1987 session. A review of the legislative history of K.S.A. 1986 Supp. 75-4218, as amended, shows no change in the last sentence of subsection

(b) (2) since the statute's origin in 1967. L. 1967, ch. 447, § 7; L. 1968, ch. 75, § 2; L. 1973, ch. 63, § 2; L. 1975, ch. 453, § 10; L. 1985, ch. 58, § 3.

K.S.A. 1986 Supp. 9-519 states in part:

"(1) (1) 'Bank holding company' means any company:

"(A) Which directly or indirectly owns, controls, or has power to vote 25% or more of any class of the voting shares of a bank and more than 5% of any class of the voting shares of one or more additional banks, or 25% or more of any class of the voting shares of a company which is or becomes a bank holding company by virtue of this act;

"(B) which controls in any manner the election of a majority of the directors of each of two or more banks or of a company which is or becomes a bank holding company by virtue of this act;

"(C) for the benefit of whose shareholders or members 25% or more of any class of the voting shares of a bank and more than 5% of any class of the voting shares of one or more additional banks, or 25% or more of any class of the voting shares of a company which is or becomes a bank holding company by virtue of this act, is held by trustees; or

"(D) which, by virtue of acquisition of ownership or control of, or the power to vote the voting shares of, a bank or another company, becomes a bank holding company under this act." (Emphasis added).

Given the broad prohibitory language of the last sentence of K.S.A. 1986 Supp. 75-4218(b) (2), as amended, the deletion of language in 1987 House Bill No. 2498, as amended, which would have allowed the activity questions, and the encompassing definition of a "bank holding company" in K.S.A. 1986 Supp. 9-519, it is our opinion that K.S.A. 1986 Supp. 75-4218(b) (2), as amended, prohibits a bank from depositing its pledged

securities with a custodial bank which is owned by the same holding company as the depositing bank.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas R. Lietz
Assistant Attorney General

RTS:JLM:TRL:bas