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ATTORNEY GENERAL OPINION NO. 89-79

Joan Finney
State Treasurer
900 Jackson, Suite 201
Topeka, Kansas 66612-1235

Re: Banks and Banking -- Banking Code; Supervision;
Board --Definition of Bankers' Bank

Synopsis: To secure the deposit of public funds, a depository bank may deposit pledged securities in a facility of a bankers' bank if the depository bank does not own or control the bankers' bank. The degree to which the depository bank may have an interest in the bankers' bank without constituting ownership or control may be determined by the pooled money investment board. Cited herein: K.S.A. 1988 Supp. 9-519 et seq.; K.S.A. 1988 Supp. 9-1405; 9-1719; 9-1808; 75-4218; K.S.A. 75-4224; L. 1967, ch. 447.

* * *

Dear Ms. Finney:

As state treasurer, you request our opinion regarding the pledge of securities by a bank to secure a state bank account. A state bank account must be collateralized by the pledge of securities. The securities may be deposited for safekeeping in another bank, unless the facility is "owned or controlled directly or indirectly by the bank depositing the same." K.S.A. 1988 Supp. 75-4218(b)(2); See also K.S.A. 1988 Supp. 9-1405(b) (security for deposit of funds belonging

to municipal corporations). The statutes relating to the deposit of public funds do not contain guidelines for determining whether a facility is "owned or controlled" by the depositing bank. You inquire whether K.S.A. 1988 Supp. 75-4218(b)(2) would allow a bank to deposit pledged securities in a facility owned by a bankers' bank the depositing bank owns less than a 5% interest in the bankers' bank.

A bankers' bank is defined as:

"a state bank which is owned exclusively . . . by other state banks, federally chartered banks or a [sic] one bank holding company and is organized to engage exclusively in providing services for other . . . banks. . . ." K.S.A. 1988 Supp. 9-1808.

Therefore, the bankers' bank may or may not be owned or controlled to any degree by the depository bank. If the depository bank does not own an interest or have control over the bankers' bank, then the pledged securities may be deposited in a facility of the bankers' bank.

The banking code defines control in K.S.A. 1988 Supp. 9-1719(a) as ". . . the power directly or indirectly to direct the management or policies of a financial institution or to vote 25% or more of any class of voting shares of a bank." This definition is supplied by statute to determine whether an acquisition or disposition of control over a bank requires the Kansas state bank commissioner's approval. Additionally, ownership or control is the key factor in determining whether an entity is a bank holding company within the meaning of K.S.A. 1988 Supp. 9-520 through 9-524. The definition of a bank holding company includes a threshold of power to vote 25% of a bank's voting shares and 5% of voting shares of one or more additional banks. See K.S.A. 1988 Supp. 9-519(a). Neither definition appearing in the banking code specifically addresses your question. However, these statutes do indicate that ownership or control may not require absolute ownership, or the ability to vote more than one-half of the voting shares of a class of shares.

In the absence of a statutory definition of ownership or control, it appears that the pooled money investment board has the responsibility of determining whether a bank may deposit pledged securities in a facility in which such bank has interest. The board is given rule-making authority in K.S.A. 75-4224. This authority, which was established by Chapter 447

of the 1967 Session Laws, extends to the prohibitory clause in K.S.A. 1988 Supp. 75-4218(b)(2), which was also contained in Chapter 447 of the 1967 Session Laws. Additionally, K.S.A. 1988 Supp. 75-4218(b)(2) indicates that facilities in which the pledged securities are deposited must have the prior approval of the board.

In conclusion, it is our opinion that in order to secure the deposit of public funds, a depository bank may deposit pledged securities in a facility of a bankers' bank if the depository bank does not own or control the bankers' bank. The degree to which the depository bank may have an interest in the bankers' bank without constituting ownership or control may be determined by the pooled money investment board.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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