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ATTORNEY GENERAL OPINION NO. 2015- 15

John D. Gatz
505 N. Franklin Avenue, Suite A
P. O. Box 346
Colby, Kansas 67701

RE: Cities and Municipalities—Libraries—Powers and Duties of Board;
Investment of Gifts and Donations

Cities and Municipalities—Miscellaneous Provisions—Investment of Public
Moneys by Governmental Subdivisions, Units and Entities; Conditions and
Limitations; Investments of Gifts and Donations

Synopsis: K.S.A. 12-1225(h) authorizes a municipal library organized under K.S.A. 12-1218 *et seq.* to invest an unrestricted gift or donation in the manner the board believes will best serve the interests of the library, but such investment is not limited to the investments authorized in K.S.A. 2015 Supp. 12-1675. Gifts and donations received by the library board are public funds. Investments must be prudent in order to insure the financial integrity of such public funds, and the library board must retain the power to control the investments and cannot delegate such power to a private entity. Cited herein: K.S.A. 2-1920; 12-1225; K.S.A. 2015 Supp. 12-1675; 12-5809; K.S.A. 17-1338; K.S.A. 2015 Supp. 19-101a; K.S.A. 20-3130; 73-436; 80-404.

Dear Mr. Gatz:

As legal counsel for Pioneer Memorial Library (Library), a municipal library organized by the City of Colby, Kansas, under K.S.A. 12-1218 *et seq.*, you ask whether the Library may invest donated funds in investments other than those listed in K.S.A. 2015 Supp. 12-1675(b).

K.S.A. 2015 Supp. 12-1675 is known as the idle funds statute. Subsection (a) provides in pertinent part that:

The governing body of any county, city . . . or other governmental entity, unit or subdivision in the state of Kansas having authority to receive hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received *and the investment of which is not subject to or regulated by any other statute.*¹

Under subsection (a), if the investment of idle funds "is not subject to or regulated by any other statute," those funds may be invested in the financial arrangements authorized in subsection (b) of K.S.A. 2015 Supp. 12-1675. Thus, the issue becomes whether a statute regulating the investment of donated funds governs the Library Board.

The duties and powers of a library board organized under K.S.A. 12-1218 *et seq.* are enumerated in K.S.A. 12-1225. Subsection (h) states that a library board has authority:

[T]o receive and accept any gift or donation to the library and administer the same in accordance with any provisions thereof. *If no provisions are specified, the board shall have the power to hold, invest or reinvest the gift and any dividends, interest, rent or income derived from the gift in the manner the board deems will best serve the interests of the library.*²

The above-italicized language in K.S.A. 12-1225(h) was added in 1984.³ Prior to the 1984 amendment to K.S.A. 12-1225(h), Attorney General Opinion No. 77-210 addressed whether a library board could transfer money derived from gifts or donations to a private non-profit corporation for use in promoting and developing the library. That opinion stated:

Gifts and bequests to the library, when accepted by the Board, become public funds, which the Board may disburse only as provided by law. The management of all public funds of the library is a public trust, which rests by law upon the duly appointed members of the Library Board, which the Board cannot delegate to any third party. . . . Once transferred to the corporation, they become funds of the corporation, and subject to its direction and control, and are no longer subject to the control of the Board itself. . . . There is absolutely no authority for action by the Library Board transferring control of its funds, from whatever source derived, to that of a private body"

¹ Emphasis added.

² Emphasis added.

³ L. 1984, Ch. 69, § § 2 and 7.

Attorney General Opinion No. 77-210 concluded that the prior version of K.S.A. 12-1225(h) authorized a library board to accept any gift or donation for the library but it did not authorize a library board *to transfer* such gifts or donations to a private entity for its control and use. Here, however, you ask whether K.S.A. 12-1225(h) authorizes a library board *to invest* the unrestricted gifts and donations that it receives in investments not listed in K.S.A. 2015 Supp. 12-1675(b).

As noted earlier, the Kansas Legislature amended K.S.A. 12-1225(h) in 1984 to authorize a library board to invest the unrestricted gifts and donations that it receives. The same legislation also included special provisions that applied only to the library board in Johnson County⁴ and amended the county home rule statute by prohibiting a county from using its home rule power to effect changes to the 1984 amendments.⁵ The testimony for these statutory changes did not explain the reason for amending K.S.A. 12-1225(h).⁶ Thus, the legislative intent behind the 1984 amendment to K.S.A. 12-1225(h) is not clear. Accordingly, we employ the rules of statutory interpretation to determine whether the Legislature intended to exempt the investment of unrestricted donations that the Library received under K.S.A. 12-1225(h) from the investment restrictions in K.S.A. 2015 Supp. 12-1675(b).

A longstanding rule of statutory interpretation is "that when there is a conflict between a statute dealing generally with a subject and a statute specifically addressing the subject, the specific statute controls."⁷ K.S.A. 2015 Supp. 12-1675 applies to numerous types of municipalities and addresses the investment of any public funds that are idle and not subject to another statute regulating the investments of such funds. By contrast, K.S.A. 12-1225(h) applies only to municipal libraries organized under K.S.A. 12-1218 *et seq.* and to the investment of the unrestricted gifts and donations that the libraries receive. K.S.A. 12-1225(h) is the more specific statute and is controlling.

Another rule is that even though "statutes may be not strictly *in pari materia*, in the construction and interpretation of those relating to the same subject matter or having the same general purpose, reference may be made to them to determine the intent of the legislature as to such subject matter or purpose."⁸ We note that another act authorizing certain cities to levy a tax and place those moneys in a building fund for a public library⁹ expressly requires that the investment of those moneys comply with K.S.A. 2015 Supp. 12-1675. It provides in pertinent part that the "board of directors may invest any portion of the building fund which is not currently needed in investments authorized by K.S.A.

⁴ *Id.* at §§ 1(b), 2(d), 3, 4, 5, and 6(b).

⁵ *Id.* at §§ 8(20) and 9(20). Now codified in K.S.A. 2015 Supp. 19-101(a)(16).

⁶ See *Minutes*, Senate Committee on Local Government, March 22, 1984, and *Minutes*, House Committee on Local Government, April 4, 1984.

⁷ *Schlaikjer v. Kaplan*, 296 Kan. 456, 466 (2013). Internal citations omitted.

⁸ *Martindale v. Tenny*, 250 Kan. 621, 632 (1992). Internal citations omitted.

⁹ See L. 1970, Ch. 73, §§ 1-2. Now codified in K.S.A. 12-1254 and 12-1255.

12-1675, and amendments thereto, in the manner prescribed therein."¹⁰ Statutes in other acts use similar language requiring compliance with K.S.A. 12-1675.¹¹

To read the same restriction into K.S.A. 12-1225(h), we would have to add language to it. This is contrary to another rule of statutory interpretation. When interpreting a statute, we cannot delete or add vital provisions if the legislature neglected to enact the change as intended. Such errors can be remedied only by the legislature.¹²

Based upon the above rules of statutory construction, we conclude that K.S.A. 12-1225(h) authorizes a municipal library organized under K.S.A. 12-1218 *et seq.* to invest an unrestricted gift or donation in the manner the board believes will best serve the interests of the library, but such investment is not limited to the investments authorized in K.S.A. 2015 Supp. 12-1675. This conclusion, however, does not overcome the concern raised in Attorney General Opinion No. 77-210—the library board must retain the power to control the investments and cannot delegate such power to a private entity. Even with the broad authority of K.S.A. 12-1225(h), the library board should make only prudent investments in order to insure the financial integrity of the public funds.

Sincerely,

Derek Schmidt
Attorney General

Janet L. Arndt
Assistant Attorney General

DS:AA:JLA:sb

¹⁰ K.S.A. 12-1255.

¹¹ See *e.g.*, K.S.A. 2-1920 (The board is "authorized to invest any portion of the capital outlay fund, which is not currently needed in investments authorized by K.S.A. 12-1675, and amendments thereto."); K.S.A. 2015 Supp. 12-5809 ("The authority shall have power to invest and reinvest any funds held in reserve or sinking funds not required for immediate disbursement, in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein."); K.S.A. 17-1338 (If the donor has not specified the investments, "such fund may be invested in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein."); K.S.A. 20-3130 ("The trustees may invest any idle funds in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein."); K.S.A. 73-436 ("Said sinking fund may be invested in the investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein."); and K.S.A. 80-404 ("Township moneys not immediately required for the purposes for which such moneys were collected or received may be invested in the manner provided by K.S.A. 12-1675.").

¹² *Ft. Hays St. Univ. v. University Ch., Am. Ass'n. of Univ. Profs.*, 290 Kan. 446, 464-65 (2010).