

Approved 3/29/84  
Date

MINUTES OF THE House COMMITTEE ON Pensions, Investments & Benefits

The meeting was called to order by Representative Bob Ott at  
Chairperson

9:00 a.m.~~pm~~ on March 20, 1984, 1984 in room 527-S of the Capitol.

All members were present except:

Rep. Dyck                      Rep. Laird                      Rep. Wisdom - E  
Rep. Meacham                Rep. Francisco  
Rep. D. Miller                Rep. Shriver

Committee staff present:

Richard Ryan, Legislative Research  
Alan Conroy, Legislative Research  
Gordon Self, Revisor's Office

Conferees appearing before the committee:

Ms. Susan Bell, State Treasurer's Office  
Mr. Jim Maag, Kansas Bankers Association

The meeting was called to order by the chairman. The chairman then opened hearing on SB 675.

The first conferee was Susan Bell (See Attachment A).

The next conferee was Jim Maag (See Attachments B & C). He then answered questions from the committee.

Rep. Sand made the motion that the amendment be adopted, Rep. Patrick seconded the motion, motion carried.

Rep. Sand made the motion that the bill be passed favorably as amended, Rep. Schweiker seconded the motion, motion carried.

Meeting adjourned.



House Pensions, Investments and Benefits Hearing  
March 20, 1984

Senate Bill 675 would increase pledging requirements from 70% to 100% on all money in state bank accounts.

This measure would increase the safety of state funds, currently amounting to \$420 million, which are on deposit in banks throughout the state.

Kansas has been fortunate in that there have been very few bank failures. In the two instances I have been involved with, the state treasurer was able to recover full principal amounts as well as interest due, because in both cases the banks' pledging was over and above the required 70%.

Very recently the treasurer was able to successfully negotiate with the Federal Deposit Insurance Corporation and will receive full interest due the state on  $\frac{1}{2}$  million dollars of state money which was frozen by FDIC in a recent liquidation action.

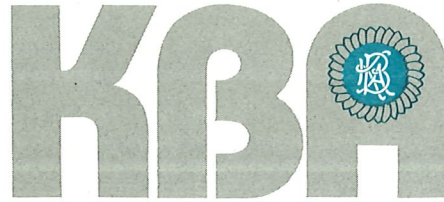
The reason full principal and interest will be collected is due to excess collateral pledged by the bank which was sold and proceeds used to pay the state for amounts not insured by FDIC. If we had not held additional collateral in this situation, but only the minimum 70% collateralization, the state could have lost \$123,600. in principal and over \$5,000. in interest.

Prior to 1975, 100% pledging was required. In today's deregulated environment the safety of state money becomes an increasing concern. The funds effected by this increased pledging requirement are those that are placed using statutory formulas, and are either demand deposit accounts or accounts earning interest pursuant to rates set by statute.

Presented by the  
Office of the State Treasurer

Atch. A

Attachment 3



The KANSAS BANKERS ASSOCIATION  
A Full Service Banking Association

March 22, 1984

TO: House Committee on Pensions, Investments and Benefits

FROM: James S. Maag, Director of Research

RE: SB 675

Mr. Chairman and members of the Committee:

We appreciate the opportunity to appear before your committee on SB 675. The Kansas Bankers Association does endorse the provisions of SB 675 as passed by the Senate and believes that the first priority of the state and Kansas banks is to assure the safety and soundness of all revenues deposited in those institutions. Therefore, the requirement of 100% pledging on such deposits rather than the current 70% is an acceptable change in the existing statutes.

We would like to recommend an amendment to SB 675 which would allow for the pledging of loans under the Guaranteed Student Loan Program as collateral on the deposits of state monies in Kansas banks. As the attached sheets show such loans are currently acceptable as collateral on deposits of the federal government in banks at the face value of the loans. In the attached Attorney General Opinion of February 1, 1984, it should be noted that the General does not imply that such loans would not be acceptable securities for pledging against state monies, but that under the definition of what constitutes a federal agency, the Guaranteed Student Loan Program does not technically as a federal agency.

Because such loans are guaranteed by a guaranty agency and further by the federal government, we believe they are every bit as sound for pledging purposes as participation certificates of other federally sponsored agencies such as Freddie Mac or Ginnie Mae.

It should also be noted that a number of Kansas banks maintain a rather sizeable portfolio of such loans and making such loans available is of enormous value to students throughout the state of Kansas and to the Kansas educational institutions. Therefore, we believe it is in the best interest of Kansas education and state government that this amendment be made to the pledging statutes for the deposit of state monies.

We appreciate very much the opportunity to appear and would request your favorable consideration of this amendment and of SB 675.

JSM/ljs

Atch. B

STATE MONEYS

**75-4201. Definitions.** As used in this act, unless the context otherwise requires:

(p) "Securities" means any one or more of the following:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof.

(2) Kansas municipal bonds which are general obligations of the municipality issuing the same.

(3) Revenue bonds of any agency or arm of the state of Kansas.

(4) Revenue bonds of any municipality, as defined by K.S.A. 10-101, within the state of Kansas or bonds issued by a public building commission as authorized by K.S.A. 12-1761 if approved by the state bank commissioner, except (A) bonds issued under the provisions of K.S.A. 12-1740 *et seq.* unless such bonds are rated at least MIG-1 or Aa by Moody's Investors Service or AA by Standard & Poor's Corp. and (B) bonds secured by revenues of a utility which has been in operation for less than three years. Any expense incurred in connection with granting approval of revenue bonds shall be paid by the applicant for approval.

(5) Temporary notes of any municipal corporation or quasi-municipal corporation within the state of Kansas which are general obligations of the municipal corporation or quasi-municipal corporation issuing the same.

(6) Warrants of any municipal corporation or quasi-municipal corporation within the state of Kansas the issuance of which is authorized by the state board of tax appeals and which are payable from the proceeds of a mandatory tax levy.

(7) Bonds of any municipal or quasi-municipal corporation of the state of Kansas which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America. A copy of such escrow agreement shall be furnished to the treasurer.

(8) *Notes representing loans to students in colleges or vocational schools which are insured either by Federal insurance or by a State agency or private nonprofit institution or organization administering a student loan insurance program in accordance with a formal agreement with the Commissioner of Education under the provisions of the Higher Education Act of 1965 or the National Vocational Student Loan Insurance Act of 1965.*

(9) All of such securities shall be current as to interest according to the terms thereof.

(10) Whenever a bond is authorized to be pledged as a security under this section, such bond shall be accepted as a security if (i) in the case of a certificated bond, it is assigned, delivered or pledged to the holder of the deposit for security; (ii) in the case of an uncertificated bond, registration of a pledge of the bond is authorized by the system and the pledge of the uncertificated bond is registered or (iii) in a form approved by the attorney general, which assures the availability of the bond proceeds pledged as a security for public deposits.



**Subpart C—Interest and Compensation**

## § 203.13 Rate of interest.

The rate of interest to be used in connection with the Note Option and the Remittance Option will be equal to the Federal funds rate less twenty-five basis points (i.e.,  $\frac{1}{4}$  of 1 percent). Details about the computation are included in the Procedural Instructions for Treasury Tax and Loan Depositories.

## § 203.14 Compensation for services rendered.

(a) *General.* Depositories will not be separately compensated for servicing the tax and loan account, but the bookkeeping costs of maintaining that account are considered in establishing the per-item fee for each Federal tax deposit, as prescribed at § 214.6(b) of this chapter.

(b) *Remittance Option—Class 2 depositories.* Fees payable to Remittance Option—Class 2 depositories for Federal tax deposits will be reduced by an analysis credit representing the value of the balances in tax and loan accounts in excess of a current day's credits. Specific details regarding the determination of the amount of compensation due are discussed in the Procedural Instructions for Treasury Tax and Loan Depositories.

**Subpart D—Collateral Security**

## § 203.15 Collateral security requirements.

(a) *Note Option.* (1) Before crediting deposits to its Treasury tax and loan account, a Note Option depository shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d) and (e) of this section in an amount that is sufficient to cover the sum of 100 percent of the amount of the note balance and the closing balance in its Treasury tax and loan account which exceeds recognized insurance coverage, minus the amount of the note balance attributable to special direct investments.

(2) Before special direct investments are credited to a depository's note account, a Note Option depository shall pledge collateral security in accord-

ance with the requirements of paragraphs (c)(2) and (e) of this section, and in accordance with the valuations of paragraphs (d)(4) through (d)(8) of this section, as applicable, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Remittance Option.* Prior to crediting deposits to its Treasury tax and loan account, a Remittance Option depository shall pledge collateral security in accordance with the requirements and valuations of paragraph (d) of this section in an amount which is sufficient to cover the maximum balance in the tax and loan account at the close of business each day, less recognized insurance coverage.

(c) *Deposits of securities.* (1) Collateral security required under paragraphs (a)(1) and (b) of this section shall be deposited with the Federal Reserve Bank of the district, or with a custodian or custodians within the United States designated by the Federal Reserve Bank, under terms and conditions prescribed by the Federal Reserve Bank.

(2)(i) Collateral security required under paragraph (a)(2) of this section shall be pledged under a written security agreement on a form provided by the Federal Reserve Bank of the district. The collateral security pledged to satisfy the requirements of paragraph (a)(2) of this section may remain in the pledging depository's possession and the fact that it has been pledged shall be evidenced by advices of custody to be incorporated by reference in the written security agreement. The written security agreement and all advices of custody covering collateral security pledged under that agreement shall be provided by the depository to the Federal Reserve Bank of the district. Collateral security pledged under the agreement shall not be substituted for or released without the advance written approval of the Federal Reserve Bank of the district, and any collateral security subject to the security agreement shall remain so subject until an approved substitution is made. No substitution or release shall be approved until an advice of custody containing the description required by the writ-

ten security agreement is received by the Federal Reserve Bank of the district.

(ii) Treasury's security interest in collateral security pledged by a depository in accordance with paragraph (c)(2)(i) of this section to secure special direct investments is perfected without the Treasury's taking possession of the collateral security for a period of not to exceed 21 days from the day of receipt of the special direct investment.

(d) *Acceptable securities.* Unless otherwise specified by the Secretary of the Treasury, collateral security pledged under this section may be transferable securities of any of the following classes:

(1) Obligations issued or fully insured or guaranteed by the United States or any U.S. Government agency, and obligations of Government-sponsored corporations which under specific statute may be accepted as security for public funds: At face value.

(2) Obligations issued or fully guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank or the Asian Development Bank: At face value.

(3) Obligations partially insured or guaranteed by any U.S. Government agency: At a value equal to the amount of the insurance or guaranty.

(4) Notes representing loans to students in colleges or vocational schools which are insured either by Federal insurance or by a State agency or private nonprofit institution or organization administering a student loan insurance program in accordance with a formal agreement with the Commissioner of Education under the provisions of the Higher Education Act of 1965 or the National Vocational Student Loan Insurance Act of 1965: At face value.

(5) Obligations issued by States of the United States: At 90 percent of face value.

(6) Obligations of Puerto Rico: At 90 percent of face value.

(7) Obligations of counties, cities, and other governmental authorities and instrumentalities which are not in

default as to payments on principal or interest: At 80 percent of face value.

(8) Obligations of domestic corporations which may be purchased by banks as investment securities under the limitations established by Federal bank regulatory agencies: At 80 percent of face value.

(9) Commercial and agricultural paper and bankers' acceptances approved by the Federal Reserve Bank of the district and having a maturity at the time of pledge not to exceed 2 years: At 90 percent of face value.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 1, 1984

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 84- 6

The Honorable Joan Finney  
Treasurer, State of Kansas  
700 Harrison  
Topeka, Kansas 66601

Re: State Departments -- State Moneys -- Deposit of  
State Moneys; Use of Notes Representing Loans Under  
the Federal Guaranteed Student Loan Program as  
Securities Therefor

Synopsis: Pursuant to K.S.A. 75-4201 et seq., the Pooled Money  
Investment Board may designate state or national banks  
located in Kansas to receive active and inactive  
accounts of state moneys. As provided in K.S.A. 75-  
4218, all state bank accounts shall be secured by  
pledge of securities, which are held by the state  
treasurer, an approved Kansas bank or the federal  
reserve bank in Kansas City, Missouri. The term  
"securities" is defined at K.S.A. 1983 Supp. 75-4201(p)  
to include [at paragraph (1)] obligations that are in-  
sured as to principal and interest by the federal  
government or any agency thereof. While the federal  
Guaranteed Student Loan Program involves the partici-  
pation of a guarantee agency which insures the repay-  
ment of one hundred percent of the principal and inter-  
est due on such loans which are not repaid, such an  
agency is not an agency of the federal government.  
Therefore, notes representing loans under the federal  
Guaranteed Student Loan Program cannot be pledged as  
securities to secure the deposit of state moneys.  
Cited herein: K.S.A. 1983 Supp. 75-4201, 75-4208,  
K.S.A. 75-4218, 20 U.S.C.A. §1071, 34 C.F.R. §§  
682.100, 682.200, 682.400, 682.406.

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Dear Mrs. Finney:

As Treasurer for the State of Kansas, you request our opinion

on a question concerning the deposit of state moneys in banks located in this state. Specifically, you refer us to K.S.A. 75-4201 et seq., which act provides the procedures for placing active and inactive state accounts in Kansas banks, both state and nationally chartered. In that banks which are selected by the Pooled Money Investment Board (which you, as State Treasurer, chair) must pledge securities to guarantee such deposits, a question has arisen as to whether certain types of notes fall under the definition of securities, and therefore qualify for the purpose of pledging. Before turning to the specifics of the instruments involved, it would be helpful to set out the pertinent statutes.

The Pooled Money Investment Board (Board) meets each July for the purpose of initiating the process of designating banks to receive accounts of active and inactive state moneys. (K.S.A. 1983 Supp. 75-4208). Those banks which are interested in obtaining such accounts may submit sealed proposals which are considered by the Board no later than September 1. At that time, awards of active and inactive accounts of state and special moneys are made, after which time each bank securing an account is notified of its award and "that the same is subject to approval of securities to be pledged as prescribed in the act." [K.S.A. 1983 Supp. 75-4208(c)].

Requirements for the pledging of securities are set out by K.S.A. 75-4218 as follows:

"(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 securities owned by it, in one of the following ways:

(1) Deposit with the treasurer.

(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.

(3) Deposit with the federal reserve bank of Kansas City, Missouri.

(4) Any combination of (1), (2) and (3)."

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"(e) Active accounts, time deposit, open ac-



counts, inactive accounts, fee agency accounts and custodial accounts shall be secured in an amount equal to seventy percent (70%) thereof, less so much of any such account as is protected by the federal deposit insurance corporation. Any agency responsible for a fee agency account shall transfer immediately all moneys not so secured to the state treasurer for deposit in the state treasury."

In turn, the term "securities" is defined by K.S.A. 1983 Supp. 75-4201(p) to include a variety of municipal bonds, revenue bonds, temporary notes and warrants, as well as any "[d]irect obligations of, or obligations that are insured as to principal and interest by, the United State government or any agency thereof."

The question you present concerns the possible use of notes which represent loans made under the Guaranteed Student Loan Program (GSLP) as securities for the purposes of the above statutes. In that you have provided us with a thorough and lengthy memorandum which sets forth the way in which the GSLP operates, accompanied by numerous attachments, we will not attempt to repeat everything that you have set out. However, in that the central issue presented by your request concerns the nature of such loans and the agencies which guarantee their repayment, some description of the program should be given.

The GSLP was created by Title IV, Part B of the Higher Education Act of 1965, as amended. (20 U.S.C.A. §1071 et seq.). The program makes low interest loans available to eligible students attending post-secondary schools, and functions as a "partnership" between four different entities: The federal government, by way of the Department of Education; private lenders; the educational institution; and a state guarantee agency or a private, non-profit organization which serves as guarantor. The lender advances its funds to the student, with the guaranty agency insuring against loss. 34 C.F.R. §682.100. The agency, in turn, is protected through agreements with the Department of Education, which result in full payment of default claims, as long as those claims are held to a rate of five percent or less a year. 34 C.F.R. §682.400, et seq. For higher default rates, compensation decreases to less than one hundred cents on the dollar. This has the effect of leaving the federal government ultimately responsible, although the loans themselves are not guaranteed by the government.

The Higher Education Assistance Foundation (HEAF) was incorporated in 1976 as a Minnesota non-profit corporation, and currently serves as a private guarantee agency for GSLP loans made in Kansas and four other states, plus the District of Columbia. HEAF has entered into a number of agreements with the Department of Education, copies of which you attached to your letter and memorandum, by which the agency may be reimbursed by the federal

government for those amounts on which it cannot collect. From the agreements, it is apparent that primary collection duties rest with the agency, which assists lenders with initial efforts to collect amounts in arrears and then undertakes its own efforts after it has had to pay out on a default. It is given an incentive to do so by the federal government, for if defaults rise to more than nine percent, only 80% of the amount paid to lenders is reimbursed to the agency. 34 C.F.R. 682.406.

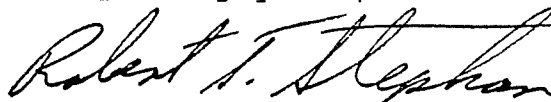
From our review of the GSLP and the relationship between the federal government and HEAF, it is our opinion that the latter agency cannot be said to be an agency of the United States government. It was not created by the Department of Education, nor any other branch of the federal government, nor are its officers or directors appointed by or accountable to the federal government. While it must meet certain requirements in order to participate in the GSLP, participating educational institutions and lenders must do so as well. 34 C.F.R. §682.200 et seq. Therefore, in that it is HEAF which guaranteed 100 percent repayment to the lender, not the federal government, paper representing GSLP loans is not insured as to principal and interest by the federal government, but by a private agency, which may or may not receive full repayment depending on the percentage of defaulted loans. Accordingly, GSLP loan notes are not "securities" for the purposes of K.S.A. 1983 Supp. 75-4201(p), and may not be pledged by a bank for the receipt of state accounts. This situation is clearly distinguishable from that presented by a previous opinion of this office, No. 83-96, which involved the use as security of participation certificates (under K.S.A. 9-1402) issued by the Federal Home Loan Mortgage Corporation. There, the facts indicated that the FHLMC was a federally sponsored corporation, without the degree of independence possessed by HEAF.

In conclusion, pursuant to K.S.A. 75-4201 et seq., the Pooled Money Investment Board may designate state or national banks located in Kansas to receive active and inactive accounts of state moneys. As provided in K.S.A. 75-4218, all state bank accounts shall be secured by pledge of securities, which are held by the state treasurer, an approved Kansas bank or the federal reserve bank in Kansas City, Missouri. The term "securities" is defined at K.S.A. 1983 Supp 75-4201(p) to include [at paragraph (1)] obligations that are insured as to principal and interest by the federal government or any agency thereof. While the federal Guaranteed Student Loan Program involves the participation of a guarantee agency which insures the repayment of one hundred percent of the principal and interest due on such loans which are not repaid, such an agency is not an agency of the federal government. Therefore, notes representing loans under the federal Guaranteed Student Loan Program cannot be pledged as secur-

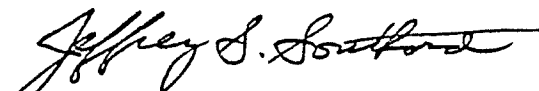
The Honorable Joan Finney  
Page Five

ities to secure the deposit of state moneys.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JJS:crw