

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m. ~~p.m.~~ on January 21, 1986 in room 529-S of the Capitol.

All members were present except:

Sen. Karr - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Jim Turner, Kansas League of Savings Institutions
Ernie Mosher, Kansas League of Municipalities
John Koepke, Kansas Association of School Boards
Jim Maag, Kansas Bankers Association

The Chairman began the meeting with a welcome back to the committee members and an outline of the week's schedule. He noted that the Kansas Bankers Association and the Bank Commissioner will be presenting a bill request tomorrow and that he had asked the Bank Commissioner to appear in person so that members of the committee would have an opportunity to meet him.

The hearing began on SB 139 dealing with the deposit of public funds in local savings and loan branch offices.

The Chairman called on Jim Turner, Kansas League of Savings Institutions, for his testimony in support of SB 139. (See Attachment I). In reference to the last sentence in the first paragraph of his testimony, Mr. Turner noted that he is aware that there are two new bills relating to branch banking and that his association supports these bills also.

In answer to a question from Sen. Reilly as to why it has been required that deposits must be made in home offices only, Mr. Turner explained that this goes back to bills passed in 1979 and 1980 to allow competitive bidding with banks. In negotiations with the Kansas Bankers Association, deposit of public funds was limited to home offices. However, with recent passage of multibank legislation, the situation has changed, and, thus, he is requesting the passage of SB 139. He added that if the bill proves to be wrong, it can be corrected; but local units need a chance.

Ernie Mosher, Kansas League of Municipalities, followed with testimony in support of SB 139. (See Attachment II).

Sen. Reilly questioned Mr. Mosher as to his statement regarding no-fund warrants being used now without clear statutory authority. Mr. Mosher responded that if proper investment procedure is followed in the transferring of funds, it is legal and would not be considered a co-mingling of funds.

Sen. Harder inquired if there is a time limit in which money borrowed from other public funds to fund no-fund warrants has to be repaid. Mr. Mosher answered that the time limit is set by a Board of Tax Appeals and is usually set at three years. He added that there is a statute that prohibits investment of public funds from one fund to another, but the transfer of investments can be done according to law.

John Koepke, Kansas Association of School Boards, testified in support of SB 139. He stated that his arguments for the bill are the same as those testifying before him. He said that governmental agents have been faced with declining interest rates and need to have the ability to invest in competitive markets.

The final proponent of SB 139 to appear was Jim Maag, Kansas Bankers Association. (See Attachment III). He stated that the proposed amendment to K.S.A. 12-1675

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on January 21, 1986.

included in his testimony would be ready for the committee's consideration tomorrow. With this, the hearing on SB 139 was concluded.

Committee discussion followed. The Chairman suggested that the Revisor of Statutes prepare the necessary amendments due to the passage of legislation last year. Staff suggested that for the sake of simplicity, it would be better to prepare a substitute bill, and the Chairman left it up to staff's discretion.

Sen. Harder made a motion to amend everything needed in SB 139 to update it to current statutory law. Sen. Burke seconded, and the motion carried.

As to the policy amendment previously offered by Mr. Mosher regarding no-fund warrants in investment authority, Sen. Strick made a motion to incorporate it into the substitute bill. The Chairman said that he had not had enough time to consider this and would leave it to the discretion of the committee. Sen. Werts seconded the motion, explaining that this is a similar situation to the state when it borrows from other funds to keep solvent. The motion carried.

Sen. Harder made a motion to amend SB 139 to be effective when published in the State Register. Sen. Werts seconded, and motion carried.

Sen. Strick made a motion to amend line 429 of SB 139 by inserting after the word "banks", "with home offices in the State of Kansas" as suggested by Mr. Maag. Sen. Gannon seconded, and the motion carried.

Mr. Turner stated at this time that he has no objection to conceptually amending SB 139, as suggested by Mr. Maag, on page 8, line 280, which would allow subsections (b) (2) and (b) (3) to be interpreted together rather than separately as the Attorney General has ruled. Sen. Gannon made a motion to so amend SB 139. Sen. Kerr seconded, and the motion carried.

Sen. Strick made a motion for the introduction of a substitute bill, Sen. Gordon seconded, and the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
1-21-86	Martin C. Umbholtz	Topeka	KCU L
"	Bill Harris	Manhattan	KST
"	Jim Turner	Topeka	KLSI
"	Tom Carson	Topeka	Longwood/Ks. Nursing
"	John Beyle	Topeka	KA83
"	Phil Anderson	TOPEKA	BUDGET DIV.
"	Jim Miller	"	FBA
"	Wayne D. Morris	"	Security Benefit Group

RLSI Kansas League of Savings Institutions

JAMES R. TURNER, President • Suite 612 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

January 21, 1986

TO: SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS
RE: S.B. 139 (Local Public Funds Deposits, S&L Offices)

The Kansas League of Savings Institutions appreciates the opportunity to appear before the Senate Committee on Financial Institutions and Insurance in support of the passage of S.B. 139. This bill would expand the investment opportunities for local units of government by deleting the restrictions in 1985 Supp. 9-1401 and 12-1675 that public funds may be placed only in the home offices of savings and loan associations and banks. The enactment of S.B. 139 would allow local units to seek competitive bids from savings and loan branch offices and limited facility branches of commercial banks.

At the outset we would note that there are several amendments necessary to S.B. 139 as a result of actions taken by the Legislature in 1985 via the passage of H.B. 2122 relating to pledging requirements. These include the increase of pledging from 70% to 100%.....line 94 and lines 159-173.....and the elimination of real estate mortgage pledging.....lines 117-120 and lines 177-191. Further, we would appreciate the assistance of the Revisor's office in making the appropriate year and Supplement changes from 1984 to 1985.

While a number of ancillary or "smokescreen" issues or concerns may be advanced regarding S.B. 139, there are really only two basic issues before the committee that must be addressed:

1. Shall local units of government have the option and the opportunity to place their idle funds as they analyze would be in the best interest of the unit they represent or shall the monopoly over such deposits be continued by the commercial banking industry in this state?
2. Should the disparity resulting from the passage of multi-bank holding company legislation be continued whereby multi-bank branches are allowed to bid but savings and loan branches are not?

1/21/86 Sen. FI+I
Attachment I



Senate Committee on Financial Institutions and Insurance
January 21, 1986
Page 2

With the increased demand on local units to maximize the use of the tax dollars collected and to improve the yield on their investments, the continued denial of competitive bidding in so many Kansas communities is both imprudent and unfair. There are presently 64 counties that must invest their funds primarily in Kansas banks. Of this number, 45 counties have a branch office of a savings and loan association and no home office and 19 counties do not have a savings and loan office.

In addition, there are 88 Kansas cities with limited choice of investing public funds as these are communities with branch offices and no home office. Included in this group would be communities such as Abilene, Arkansas City, Clay Center, Colby, Derby, Goodland, Great Bend, Iola, Lenexa, Norton, Paola, Pratt, Sterling, and Wamego.....to list but a few.

Further, while such evidence is difficult to document, there are indications that those communities in which competitive bidding is not available that local units receive one-half to one percent less on their investments. With the total local unit base approximating 1.5 billion, this represents a considerable subsidy to the commercial banking industry.

A survey this past month of 50% of the League membership, representing 57% of the state's assets, revealed that the respondents had \$83 million of the total \$595 million of local funds available on deposit.....or 14% of the total. Obviously, these communities are receiving competitive bids. Also, it exposes the myth that allowing savings and loans to bid competitively would result in the money being "sucked out of the banks."

It is especially important to note that the survey respondents indicated that in communities where they have branch offices, but are not allowed to bid, there is presently \$455 million of local public funds. We project this total approximates \$650 million on a state-wide basis.

These numbers reveal not only the restrictions and limited opportunities imposed on local units in the exercise of their investment decisions, it points up the continued unfair aspect of a bank monopoly in this area that results in a taxpayer subsidy to selected banks. The unfairness of this bank monopoly further exacerbates the disparity in privilege tax assessed against financial institutions whereby commercial banks enjoy a lower privilege tax structure than do savings and loan associations.



Senate Committee on Financial Institutions and Insurance
January 21, 1986
Page 3

Also, S.B. 139 addresses the issue of inequity created by the 1985 passage of the multi-bank holding company legislation. Enclosed find a recent listing from Kansas Business News of the 10 largest multi-bank holding companies. Regardless of arguments put forth regarding structures, boards, officers, etc.....we view the 8 banks acquired by Fourth National Bank as a branch network of the Fourth.....and no different than the branch network of a savings and loan association. The ultimate investment decisions, those impacting rates paid to investors whether individuals or local units, will be influenced if not dictated by the parent company.

We deem it to be totally unfair to allow these acquired banks (branches) to be allowed to continue to bid on local public funds absent the passage of S.B. 139. Conversely, the passage of S.B. 139 would end the debate over financial institutions bidding as all S&L and Bank offices could bid.....provided they are domiciled Kansas companies.

In closing, we would like to emphasize that the intent of S.B. 139 is to allow local units to expand the number of financial institutions from which they can secure competitive bids for their idle funds. It does not mandate that they use a savings and loan institution. It should also be noted that the local unit has the sole discretion as to the type and quality of security collateral that they will accept.

Accordingly, we would request that the committee end the present inequities and allow local units the opportunity to control their investment decisions by reporting S.B. 139 favorably for passage.

James R. Turner
President

JRT:bw

Encl.

PUBLIC FUNDS SURVEY
(Comparisons)
1-15-86

1. Survey response percentage (27/59 = 46%).

2. Local public funds presently held by the home offices:

	<u>Amount Held</u>	<u>Amount Available</u>	<u>Percentage (%)</u>
City	\$ 23,262,866	\$223,710,000	10.4 %
County	\$ 13,253,058	\$258,700,000	5.1 %
School District	\$ 46,866,520	\$113,182,000	44.0 %
TOTALS	<u>\$ 83,382,444</u>	<u>\$595,592,000</u>	14.0 %

3. Total amount of local public funds presently available at the branch offices, but which we cannot bid on:

City	\$ 139,338,000
County	\$ 238,264,800
School Districts	\$ 78,219,000
TOTALS	<u>\$ 455,821,800</u>

4. Average rate of return:

City	8.22 %
County	8.05 %
School District	7.71 %

5. Is your association regularly notified of funds available for bid by local units?

YES 74% NO 23%

6. If bidding at branches were to be allowed by the Legislature;

A. Would your association bid? YES 70% NO 15%

B. Do you feel local units would pursue bids from your branches?

YES 69% NO 15%

7. Of the total survey responses, they represent 57% of the total assets of Kansas.

$$\frac{7,435,978,353}{13,097,584,147} = 57 \%$$

Largest multi-bank organizations

Rank	Organization	Assets (000s)	
1	Fourth Financial Corporation, Wichita, Kansas		
	Fourth National Bank & Trust, Wichita	1,285,543	
	Fourth Charter Bank, Wichita	2,577	
	Kansas State Bank, Newton	79,345	
	First National Bank, Coffeyville	106,008	
	National Bank of Pittsburg	86,924	
	Patron's State Bank, Olathe	130,038	
	Planters Bank & Trust, Salina	99,217	
	Citizens National Bank & Trust, Emporia	98,887	
First National Bank of Topeka	445,747	2,334,286	
2	First Bancorp of Kansas, Wichita, Kansas		
	First National Bank of Wichita	649,615	
	National Bank of ElDorado	25,000	674,615
3	Merchants Bancorporation, Topeka, Kansas		
	Merchants National Bank, Topeka	228,788	
	Kansas State Bank, Manhattan	35,613	
	First National Bank of Lawrence	124,274	388,675
4	Sierra Petroleum Co., Wichita, Kansas (See also W.A. Michaelis Jr.)		
	Hutchinson National Bank & Trust, Hutchinson	176,786	
	National Bank of Wichita	45,287	
	Twin Lakes State Bank, Wichita	49,400	
	United American State Bank, Wichita	72,170	343,643
5	CNB Financial Corporation, Kansas City, Kansas		
	Commercial National Bank, Kansas City	278,083	
	City National Bank, Atchison	53,443	331,526
6	Kansas State Financial Corporation, Wichita, Kansas		
	Kansas State Bank & Trust, Wichita	237,755	
	Central Bank & Trust, Wichita	84,700	322,455
7	Starr Bank Consultants, Hutchinson, Kansas (See note)		
	First National Bank, Meade	24,735	
	Fourth Bank of Garden City	17,573	
	Commerce Bank of Hutchinson	17,074	
	Haskell County State Bank, Sublette	39,038	
	Valley State Bank of Syracuse	18,720	117,140
8	Kansas Bank Corporation, Liberal, Kansas		
	First National Bank, Liberal	76,316	
	Citizens Bank & Trust, Abilene	39,573	115,889
9	Midwest Bancorporation, Hays, Kansas		
	Farmers State Bank & Trust, Hays	89,089	
	Bushton State Bank, Bushton	8,611	111,357
10	Kansas Bancorp II, Concordia, Kansas		
	First Bank & Trust, Concordia	56,934	
	First National Bank of Glasco	9,401	66,335

Note: Ownership of these banks is divided among Merle Starr, Pat Thompson, and various other individuals. Starr Bank Consultants provides funds management and certain other services to each affiliated bank.

Source: Kansas Business News



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Senate Committee on Financial Institutions and Insurance
FROM: E.A. Mosher, Executive Director
DATE: January 21, 1986
RE: SB 139--Public Deposits and Investments

My name is E.A. Mosher, Executive Director of the League of Kansas Municipalities, appearing in support of the basic provisions of SB 139. Our convention-adopted Statement of Municipal Policy provides that "Cities should have broad authority to invest their active and inactive moneys," and that we recommend legislation to "authorize the branch offices of savings and loan associations to accept public funds in the same manner as home offices."

We have no desire to become involved in the squabbles between banks and S&Ls. We are still festering over the so-called compromise that emerged several years ago which removed the authority of cities to invest in the branch offices of S&Ls up to the federally insured amount. Our objective is simply to increase the investment opportunities of cities. We do not know whether cities will, in fact, extensively use the authority granted by SB 139. We do believe that the competitive public environment which would result is in the public interest.

As you will note from the attached sheet, there are 86 Kansas cities which have an S&L branch office, but no home office. On the other hand, there are only 19 cities which have a home office only. There are 23 cities which have both home and branch offices, and are therefor affected by SB 139. I would also note that there are about 49 Kansas counties which have an S&L branch office, but not a home office. I do not know how many school districts would be affected, by the existence of a branch only office, but the number is apparently substantial.

We would like to propose one amendment to the bill. On page 8, line 278, we respectfully request that subsection (b)(1) be amended to add no-fund warrants, so that local units may invest in their own no-fund warrants as well as their own temporary notes.

This is now being done, without clear statutory authority and notwithstanding an Attorney General Opinion (No. 81-23, January 23, 1981). Specific mention of temporary notes in this section leaves the implication that no-fund warrants may not be an investment option. You will recall that the board of tax appeals may authorize the issuance of no-fund warrants for a fund purpose. When surplus moneys exist in another municipal fund, investment in your own no-fund warrants makes sense.

Finally, I would suggest to you that policy considerations as to where public funds are invested--whether a home office or a branch office--should be left to local determination. We think they can be trusted. I assure you that no one has more interest in the economic development of the community than those directly involved.

President: Ed Eilert, Mayor, Overland Park • Vice Presidents: John L. Carder, Mayor, Iola • Past President: Peggy Blackman, Mayor, Marion
Directors: Robert C. Brown, Mayor, Wichita • Robert Creighton, Mayor, Atwood • Irene B. French, Mayor, Merriam • Donald L. Hamilton, City Clerk/Administrator, Mankato • Carl D. Holmes, Mayor, Plains • Paula McCreight, Mayor, Ness City • Jay P. Newton, Jr., City Manager, Newton • John E. Reardon, Mayor, Kansas City • David E. Retter, City Attorney, Concordia • Arthur E. Treece, Commissioner, Coffeyville • Dean P. Wiley, City Manager, Garden City • Douglas S. Wright, Mayor, Topeka • Executive Director: E.A. Mosher

1/21/86 Sen. FI+I
Attachment II

**Home and Branch Offices
Kansas Savings and Loan Associations**

1. There are 19 cities with S&L home offices only--see Section 1, below.
2. There are 23 cities with S&L home offices and branch offices--see Section 2, below.
3. There are 86 cities with S&L branch offices and no home office--see Section 3, below.
4. There are about (map count) 49 counties which have an S&L branch office, but not a home office.

Section 1. S&L Home Office Only Cities

Chanute	Hiawatha	Lyons	Plainville
Coffeyville	Hugoton	Medicine Lodge	Roeland Park
Ellis	Kingman	Neodesha	WaKeeney
Eureka	Kinsley	Osawatomie	Wellington
Garnett	Leavenworth	Parsons	

Section 2. S&L Home and Branch Office Cities

Beloit	Hutchinson	McPherson	Russell
Dodge City	Independence	Newton	Salina
El Dorado	Junction City	Ottawa	Topeka
Emporia	Kansas City	Overland Park	Wichita
Fort Scott	Liberal	Pittsburg	Winfield
Garden City	Manhattan	Prairie Village	

Section 3. S&L Branch Office Only Cities

Abilene	Derby	Hoxie	Paola
Andover	Elkhart	Iola	Phillipsburg
Anthony	Ellsworth	LaCrosse	Pratt
Arkansas City	Erie	Larned	Rose Hill
Atchison	Eudora	Lawrence	Sabetha
Augusta	Fairway	Leawood	St. Francis
Baldwin City	Fredonia	Lenexa	Scott City
Basehor	Gardner	Lindsborg	Seneca
Baxter Springs	Girard	Louisburg	Silver Lake
Belleville	Goodland	Lyndon	Smith Center
Beloit	Great Bend	Marion	Spring Hill
Bonner Springs	Greensburg	Marysville	Sterling
Buhler	Halstead	Meade	Stockton
Burlington	Haven	Mulvane	Syracuse
Caldwell	Hays	Ness City	Tonganoxie
Caney	Haysville	Norton	Ulysses
Clay Center	Herington	Oakley	Valley Center
Colby	Hesston	Oberlin	Wamego
Columbus	Hill City	Olathe	Washington
Concordia	Hillsboro	Osage City	Westwood
Cottonwood Falls	Hoisington	Osborne	
Council Grove	Holton	Oskaloosa	



The KANSAS BANKERS ASSOCIATION

A Full Service Banking Association

January 21, 1986

TO: Senate Committee on Financial Institutions and Insurance

FROM: James S. Maag, Director of Research
Kansas Bankers Association

RE: Senate Bill 139

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee and discuss the provisions of SB 139. The bill makes several significant amendments to the local public funds statutes and will not only impact where local public funds are placed, but could also have an impact on the Kansas economy.

You are well aware of the difficulties we are experiencing in Kansas with our agricultural economy and any time agriculture is struggling it is bound to have an impact on the financial institutions serving agriculture. In 1985 there were 13 banks closed in Kansas and in 5 of those instances the bank was not reopened. In 3 of those 5 instances the community was then left without any banking services which creates tremendous hardships - especially for senior citizens. It is important to understand that Kansas has 323 one-bank communities and thus the possibility of additional communities being without banking services is a very important issue which we believe should be addressed by the legislature with all due speed.

Because there is a strong concern that there will continue to be a dearth of bidders to establish a newly-chartered bank in communities where the one bank has been declared insolvent the Kansas Bankers Association is recommending legislation which would allow a Kansas bank to acquire the assets and liabilities of the insolvent bank in a one-bank community and establish a detached facility there. This would obviously mean the acquiring bank would be establishing a detached facility or branch beyond the boundaries of the city or town where the home office of the acquiring bank is located.

Office of Executive Vice President • 707 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

1/21/86 S. FIET
Attachment III

An important part of the deposit base which the acquiring bank would have would be the deposits of local units of government. In most banks local public funds deposits will constitute from 5% to 15% of total deposits. Under present public funds law it would be impossible for the bank planning to establish a detached facility at the site of the insolvent bank to hold those public funds deposits. To exclude these deposits from the deposit base would diminish significantly the desire of any bank to bid on the assets and liabilities of the insolvent bank. Therefore, we believe it is important that legislation allowing the acquiring bank to maintain those deposits be passed and it is our opinion that SB 139 would accomplish that goal.

We would request that the committee consider two amendments to the bill in its present form. First, we would request that the effective date of the act be moved from statute book to Kansas register. This would bring the bill into conformity with the effective date on the "safety net" legislation mentioned earlier. Secondly, we believe there should be an amendment to Section 8 of the bill on line 429 by inserting after the word "banks" the following: "with home offices in the state of Kansas". This would bring that section into conformity with similar references in other sections of the bill.

We would also request that the committee seriously consider an amendment to K.S.A. 12-1675 which would nullify what we believe to be an incorrect interpretation of that statute by the Attorney-General. In a situation involving a hospital district the Attorney-General has ruled that subsections (b) (2) and (b) (3) must be interpreted separately and are not inter-related in their application. We believe this is completely contrary to legislative intent as set forth when this statute was extensively amended in 1982 and the interpretation negates the long-standing legislative philosophy that tax dollars should be invested as nearly as possible within the boundaries of the local units where those tax revenues were collected. Your careful consideration of this matter would be greatly appreciated.

Thank you for the opportunity to appear before the committee and we urge you to give favorable consideration to SB 139 with the appropriate amendments.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 11, 1985

MAIN PHONE 913 296-2215
CONSUMER PROTECTION 296-3725

Theodore J. Nichols
Harper County Attorney
Harper County Courthouse
Anthony, Kansas 67003

Re: Investment of Idle Funds Pursuant to K.S.A. 1984 Supp. 12-1675

Dear Mr. Nichols:

Attorney General Stephan has received your letters of March 26 and April 3, 1985, and has requested that I respond. In your letters, you request our informal opinion concerning a situation which exists in Harper County concerning the Attica Hospital District No. 1. Specifically, the hospital district has invested certain of its idle funds in a savings and loan association located in an adjoining county. In that questions were raised concerning the propriety of this investment under K.S.A. 1984 Supp. 12-1675, you wish to have our conclusions on the matter.

I would first note that you have provided us with a lengthy and detailed letter setting forth your conclusions given seven facts which you set forth as undisputed. Rather than repeat these, I would simply note in passing that there are no savings and loan associations, either state or federally chartered, or any federally chartered savings banks with offices located within the boundaries of Attica Hospital District No. 1 or within Harper County itself. While there are commercial banks located within the district which would provide certificates of deposit under subsection (b)(2) of the statute, the district has invested its funds in time certificates of deposit under subsection (b)(3). As you note, the statute appears to set forth five different ways in which money not immediately needed by a

governing body may be invested, with only the fifth option (U.S. Treasury bills or notes) limited by the requirement that it be employed only if no local financial institution will make certificates of deposit available at certain minimum rates prescribed by statute.

In dealing with the questions presented under K.S.A. 1984 Supp. 12-1675, I am in agreement with the conclusions you reach in your letter as to the propriety of the district choosing this type of investment. I would also agree with you that an investing unit is not required to restrict itself to only those options which limit the deposit of idle funds to local institutions. The legislature clearly intended to provide local units of government with four methods of investing idle funds under any circumstances, with a fifth alternative being provided under more limited circumstances. The requirement for attempting to invest locally is found within each one of these provisions, and I do not believe the statute should be construed to contain an overall requirement for such local investment before institutions outside the county may be used.

In your second letter, the question is raised as to whether the hospital district is in compliance with K.S.A. 9-1401, which deals with the designation of depositories for municipal and quasi-municipal funds. You indicate that, to the best of your knowledge, the district does maintain a depository account in the First National Bank of Attica, Kansas, and so is in compliance with the statute. I would further note that the accounts mentioned in this statute are fundamentally different from those referred to in K.S.A. 1984 Supp. 12-1575, in that the former concerns active accounts whereas the latter deals with idle accounts. This distinction is drawn in Attorney General Opinion No. 83-88, which you cite in your letter of March 26.

An additional question is presented by the fact that the wife of the administrator of the district is one of the officers at the savings and loan association in which the district has invested a good portion of its idle funds. I would call your attention to K.S.A. 75-4304, which prohibits public officers from making contracts with persons or businesses by which they are employed or in whose business they have a substantial interest. The statute does not extend to employment by a public officer's spouse, which would appear to be the situation here. Accordingly, although my information on the details of this transaction are sketchy, it would appear that in either fact or law there is no violation of the conflict of interest statutes.

I trust this has been responsive to your concerns. I appreciate the background work that you have done in this matter, and believe you have reached a correct result as to all of the questions which you presented. If we can be of any further assistance, please do not hesitate to contact us.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Jeffrey S. Southard
Deputy Attorney General

JSS:crw

EIDSON, LEWIS, PORTER & HAYNES

LAWYERS

1300 MERCHANTS NATIONAL BANK BUILDING

EIGHTH AND JACKSON STREETS

TOPEKA, KANSAS 66612-1252

913-233-2332

PHILIP H. LEWIS
JAMES W. PORTER
WILLIAM G. HAYNES
CHARLES N. HENSON
AUSTIN NOTHERN
CHARLES D. MCATEE
DALE L. SOMERS
K. GARY SEBELIUS
RICHARD F. HAYSE
RONALD W. FAIRCHILD
JOHN H. WACHTER

ANNE L. BAKER
JAMES P. RANKIN
PATRICIA A. REEDER
THOMAS D. HANEY
CRAIG A. FONTAINE
JOHN D. ENSLEY
N. LARRY BORK
CATHERINE A. WALTER

April 29, 1985

OF COUNSEL:
O. B. EIDSON

Mr. Theodore J. Nichols
County Attorney
Harper County Courthouse
Anthony, Kansas 67003

Re: Attica Hospital District No. 1/Investment Deposits

Dear Mr. Nichols:

Harold A. Stones, Executive Vice President of the Kansas Bankers Association, has furnished me with copies of recent correspondence from Mr. Stones to Mr. Russell Stoddard (March 27, 1985), from you to Mr. Stones (April 3, 1985), from Mr. Stones to you (April 8, 1985), and from you to Mr. Stones (April 16, 1985), all relating to the authority of Attica Hospital District No. 1 (district) to maintain an account in the Barber County Savings and Loan Association (savings and loan). Mr. Stones has asked me to outline to you the reasons for the belief of the Kansas Bankers Association that an investment deposit by the district in the savings and loan is not authorized.

My understanding of the facts relevant to application of the pertinent statutes is as follows. The district is a quasi-municipal corporation, as defined at K.S.A. 1984 Supp. 9-701, which is located wholly within Harper County. The district also is an investing governmental unit under K.S.A. 1984 Supp. 12-1675. The savings and loan has its home office in Barber County. There are no commercial banks, trust companies, savings and loan associations or federally chartered savings banks located within the district. There are several commercial banks located in Harper County.

K.S.A. 1984 Supp. 12-1675 governs the investment by the district of its funds "not immediately required for the purposes for which the moneys were collected or received," commonly referred to as "idle funds," and the investment of which is not subject to or regulated by any other statute. As for deposits in commercial banks or trust companies, under this statute they must be in institutions which have home offices in the district; if there are none, the district then may deposit idle funds in commercial banks or trust companies which have home offices in

the county in which the district is located. As an alternative to deposit of idle funds in commercial banks or trust companies, the district may deposit such funds in savings and loan associations or federally chartered savings banks, but as is the case with commercial banks and trust companies, funds must be deposited in institutions which have home offices located in the district; if no savings and loan association or federally chartered savings bank has a home office located in the district, then deposits may be made in savings and loan associations or federally chartered savings banks which have home offices in the county in which the district is located.

In the case of banks, trust companies, savings and loan associations or federally chartered savings banks, it is only where there is no institution located within the district, and an institution located within the county in which the district is located will not make a deposit available at a certain rate of interest, that the district is authorized to make an investment deposit in an institution located in an adjacent county. This alternative is not relevant to the instant question because the factual basis for a deposit outside the county is not present (an appropriate institution located within the district or within Harper County cannot or will not make a deposit available at a certain interest rate).

However, this absence of the statutory factual basis for out-of-county deposit is not the only reason why the district may not deposit its funds in an institution which has its home office in another county. K.S.A. 1984 Supp. 12-1675 must be read and applied together with K.S.A. 1984 Supp. 9-1401. In addition to principles of statutory construction which require related statutes to be read together, the Legislature made it clear that investment deposits of governmental units pursuant to 1984 Supp. 12-1675 are subject to K.S.A. 1984 Supp. 9-1401, as are other deposits of funds of local governmental units, at K.S.A. 1984 Supp. 9-1401(c) which provides:

"As used in this section and K.S.A. 9-1402, 9-1403 and 9-1405, and amendments thereto, to such sections, 'municipal corporation or quasi-municipal corporation' includes each investing governmental unit under K.S.A. 12-1675 and amendments thereto."

K.S.A. 1984 Supp. 9-1401 provides, in relevant part:

"(a) The governing body of any . . . 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 associations 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 . . . quasi-municipal corporation is located shall be designated as such official depositories if the . . . quasi-municipal corporation can obtain satisfactory security therefor . . ."

Subsection (b) of K.S.A. 1984 Supp. 9-1401 may or may not be relevant, depending on whether the governing body of the district has complied with subsection (a). If it has not, subsection (b) requires the officer having custody of the funds of the district to deposit such funds with one or more state or national banks, trust companies, state or federally chartered savings and loan associations or federally chartered savings banks which have home offices located in Harper County, if security can be obtained therefor, and to notify the governing body of where such funds are deposited.

In summary, it is clear that K.S.A. 1984 Supp. 9-1401 requires all deposits of local unit public funds to be in banks, trust companies, savings and loan associations or federally chartered savings banks which have home offices in the county in which the local unit is located, if security can be obtained for such deposits as prescribed in K.S.A. 1984 Supp. 9-1402. The statutory authority for investment deposits of idle funds in financial institutions, K.S.A. 1984 Supp. 12-1675, must be read together with K.S.A. 1984 Supp. 19-1401, and both statutes given effect. The district, being wholly located in Harper County and there being commercial banks located in Harper County, is not authorized to deposit funds, idle or otherwise, in a savings and loan association which has its home office in Barber County.

The Kansas Bankers Association appreciates the time and consideration you have given to this problem.

Sincerely yours,

Charles N. Henson
of Eidson, Lewis, Porter & Haynes

CNH:ckf
cc: Mr. Jeff Southard,
Assistant Attorney General



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE 19131 296-2215
CONSUMER PROTECTION 296-3751

November 6, 1985

Rita M. D'Agostino
General Counsel
Banking Department
700 Jackson, Suite 300
Topeka, Kansas 66603

Re: K.S.A. 9-1401

Dear Ms. D'Agostino:

Following our telephone conversation of October 28, 1985, this letter is intended to clarify the position of this office regarding the interpretation given to K.S.A. 9-1401 in my letter of April 11, 1985. As you are aware, that letter was directed to the Harper County Attorney and concerned a situation which has arisen in Harper County involving the investment of idle funds under K.S.A. 1984 Supp. 12-1675.

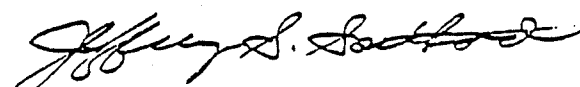
One of the issues discussed in the letter is the applicability of K.S.A. 9-1401. This statute concerns the designation by governmental units of banks or savings and loans to be the official depositories of their funds. It is contained in the banking code, and precedes the statutes which deal with the types and amounts of security which banks must produce in order to obtain deposits of public moneys. At the time of the letter, it was my conclusion that this statute did not impact upon the provisions of 1984 Supp. 12-1675, which sets very specific requirements for the investment of idle funds by a governmental agency. It is these requirements (including the provisions which allow, under certain circumstances, for investments from idle funds to be made outside the county in which the governmental unit is located), which lie at the heart of the situation in Harper County. While some are apparently reading the language of 9-1401 so as to require the same institutions designated as official depositories to also be solely eligible for idle funds under 12-1675, this is not the conclusion which I reached in the earlier letter. I

might add that it is also not the conclusion reached by the Harper County Attorney, with whom we concurred in our letter of April 11, 1985.

Accordingly, the position reached in the earlier letter is reaffirmed. I would be happy to discuss the result and our reasoning therefor with you, should you so desire.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN


Jeffrey S. Southard
Deputy Attorney General

JSS:crw