

Approved Clyde Graeber March 15, 1988  
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Clyde D. Graeber at  
Chairperson

3:30 ~~xxx~~ p.m. on March 3, 1988 in room 527-S of the Capitol.

All members were present except: Herman Dillon, Mary Jane Johnson, Bob Ott and L. V. Roper, Excused.

Committee staff present: Bill Wolff, Research Department  
Myrta Anderson, Research Department  
Bruce Kinzie, Revisor of Statutes  
June Evans, Secretary

Conferees appearing before the committee: Ernie Mosher, Kansas League of Municipalities.

Chairman Clyde Graeber brought the meeting to order and opened the hearing on Senate Bill 511, an act concerning bonds; relating to the investment of proceeds of bonds and temporary notes; amending K.S.A. 1987 Supp. 10-131 and repealing the existing section.

Ernie Mosher, Kansas League of Municipalities testified for the bill stating this is technically a change in the language of the bill which would add the words "temporary notes" to the statute thereby making it clear that municipalities have the authority to invest moneys from temporary notes as well as from bonds (See Attachment #1).

After discussion by the committee, Representative Gatlin moved and Representative Long seconded that Senate Bill No. 511 be moved out of committee and placed on the consent calendar. The motion carried.

The Chairman stated the hearing on H.B. 2752 was held on Tuesday, March 1, and what were the wishes of the committee.

After discussion, Representative Green moved and Representative Sand seconded to move H.B. 2752 out of committee and place it on the consent calendar. The motion carried.

A hearing was held on H.B. 2892 on Thursday, February 25 and the Chairman asked the wishes of the committee on H.B. 2892.

Representative Miller sent further testimony supporting H.B. 2892 which was passed out to the committee. (Attachment #2).

Representative Long moved and Representative Shallenburger seconded an amendment to the bill, i.e., on Lines 33 and 35 six months should be changed to read, "90 days". The motion carried.

Representative King expressed opposition to the bill stating this might have the opposite affect on banks and could close banks sooner, and possibly FDIC could pull out earlier on insurance and we are to protect the depositor.

After discussion Representative Shallenburger moved and Representative Gatlin seconded passing the bill out as amended. After a vote there was a show of hands being 12 yeas and 2 nays. The bill was passed out of committee favorably.

The Chairman stated there would not be any meetings next week and would see the committee the following week.

The meeting adjourned at 4:00 P.M.





## League of Kansas Municipalities

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

RE: SB 511--Municipal Investment of Temporary Note Moneys  
TO: House Committee on Commercial and Financial Institutions  
FROM: E.A. Mosher, Executive Director  
DATE: March 3, 1988

The purpose of SB 511 is to clarify the authority of municipalities as to the investment of temporary note moneys. The bill was introduced by the Senate Committee on Local Government at the request of the League. Enactment of SB 511 is supported by the League's convention-adopted Statement of Municipal Policy.

By its written terms, K.S.A. Supp. 10-131 now appears to relate only to the investment of bond moneys--it says "bonds." However, Attorney General Opinion No. 82-122, issued June 10, 1982, concludes in a four-page opinion that a "temporary note" is a "bond" for investment purposes under K.S.A. 10-131. A copy of this opinion is attached.

Further, in an opinion filed October 30, 1986 by the Court of Appeals of Kansas (Mallon v. City of Emporia), the Court concluded that "temporary notes are encompassed within the meaning of bonds." A copy of portions of this opinion is attached.

The purpose of SB 511 is to make certain that local government officials--those responsible for the safe keeping and investment of public moneys--are aware that temporary note moneys are in effect bond moneys, and should be invested pursuant to K.S.A. Supp. 10-131.

The handling of temporary note investments in the same manner as bond moneys is important since the interest earnings must be used to pay the interest on bonds or notes or used for paying the cost of the project--see lines 55:58. And as noted in the Emporia case, the interest earnings on temporary notes are to be used to reduce the project costs in the case of a special assessment project. It may not be diverted to the general fund.

There are indications that some local governments, not realizing that temporary note moneys are really bond moneys, invest temporary note moneys solely under the authority of the general investment statute--K.S.A. 12-1675 et seq. And, if they are not aware as to the restriction as to the use of note or bond investment earnings, shown in lines 55:58 in the bill, they may deposit the earnings in the general fund. Indeed, K.S.A. 12-1677, a part of the general investment law, requires interest earnings to be credited to the general fund of certain units, "except as otherwise required by state or federal law." Unless local officials understand that the basic investment authority for temporary moneys is K.S.A. Supp. 10-131, and not K.S.A. 12-1675 et seq., the interest earnings could be improperly used.

Again, our attempt is to establish, by specific statute, what is now the applicable law.

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Atch #1

Mallon v. City of Emporia

No. 58,701

JOHN J. MALLON and F. SOPHIA MALLON; STEPHEN M. KNECHT and ANN L. KNECHT; NORMAN W. POWERS and PHYLLIS A. POWERS; FREDERICH S. NEUER and PAUL F. NEUER; MARK I. ENSMAN; LESLIE B. ANDERSON and BETTY J. ANDERSON; ROY C. GALLUP, JR. and MARY J. GALLUP; CHESTER A. SPEARS and SYDNEY E. SPEARS, *Appellants/Cross-Appellees*, v. THE CITY OF EMPORIA, KANSAS, *Appellee/Cross-Appellant*.

## SYLLABUS BY THE COURT

1. CITIES AND MUNICIPALITIES—*Improvement Project—Interest Earned on Temporary Notes Set Off against Interest Cost of Temporary Notes—Levying of Assessments*. Interest earned on temporary notes, issued for specific improvement projects pursuant to K.S.A. 12-6a14, must be set off against the interest cost of the temporary notes applicable to the specific project before levying assessments.
2. SAME—*Policy Guidelines—Enforcement*. Policy guidelines fall short of being an enactment of law and are not the equivalent of a statute.
3. SAME—*Special Assessments—Statutory Limitation on Allocation of Costs*. K.S.A. 12-6a02 limits the governing body's allocation of costs in proportion to special benefits conferred.
4. SAME—*Improvement Project—Special Assessments—Restrictions on Municipality as to Apportionment of Costs*. In levying special assessments for improvements against real property in an improvement district pursuant to K.S.A. 12-6a01 *et seq.*, a municipality is bound by the apportionment of costs adopted in its resolution authorizing the improvement.
5. SAME—*Street Improvement—Apportionment of Costs—Allocation of Interest Earned on Temporary Notes*. In an appeal from an order granting summary judgment, it is held: (1) The trial court did not err in holding the City of Emporia did not arbitrarily apportion costs for T-intersections; (2) the trial court did not err in holding the City of Emporia erroneously included a full year's interest with the first installment; and (3) the trial court erred in granting summary judgment to the City of Emporia on the issue of application of interest earned from the investment of idle temporary note proceeds and the issue concerning percentage allocation of costs.

Appeal from Lyon District Court; WILLIAM J. DICK, judge. Opinion filed October 30, 1986. Affirmed in part, reversed in part, and remanded.

*Merlin G. Wheeler*, of Perkins, Hollembeak & Wheeler, Chartered, of Emporia, for the appellants/cross-appellees.

*Dale W. Bell*, of Guy, Helbert, Bell & Smith, Chartered, of Emporia, for the appellee/cross-appellant.

Before: ABBOTT, C.J., REES and DAVIS, JJ.

Mallon v. City of Emporia

unless specific provisions otherwise exist and conflict with the General Bond Law. As plaintiffs correctly point out, temporary notes are encompassed within the meaning of bonds. See *First State Bank v. Bone*, 122 Kan. 493, 252 Pac. 250 (1927). Based upon this authority, we conclude that the temporary notes, issued under the authority of 12-6a14 of the General Improvement and Assessment Law, and in which idle funds are invested, are governed by K.S.A. 10-131. Thus, the interest income must be set off against the interest expense of the temporary notes applicable to the specific project in question rather than a reduction to the interest expense for all improvement projects lumped together.

The City's failure to do so was contrary to the provisions of K.S.A. 10-131 and therefore unlawful.

b. T-Intersection

The City's written policy guidelines for constructing street improvements indicate that the cost of all intersections shall be borne by the City at large. Here, one-half of the cost of the cul-de-sac intersection was allocated to the City at large. The landowners contend that once the City adopted the written street improvement policy, it was bound to apply the cost allocation of intersections in accord with that policy. The landowners argue that failure to follow the policy constitutes an arbitrary assessment, and also argue an estoppel theory based upon the policy guidelines of the City.

The improvement project has one main subdivision road. It is a cul-de-sac, and it has a short cul-de-sac road running off of it. Thus, there are two T-intersections involved. The first intersection is located where the main subdivision road meets Lincoln Street. Lincoln Street was already in existence. The "stem" of the T ties into Lincoln Street. The expense involved is the cost of tying the main subdivision road into Lincoln Street. The second T-intersection is where the long cul-de-sac formed another T-intersection with the short cul-de-sac.

The landowners cite no cases that require the governing body to adhere to adopted policies when contravention of the policy is not in violation of the state statutes. K.S.A. 12-6a02 permits the governing body to assess all or any part of the cost of the improvement to the improvement district. And, pursuant to K.S.A. 12-6a07, the City at large may be allocated up to 95% of the cost of an improvement. "Policy guidelines" fall short of



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

June 10, 1982

MAIN PHONE (913) 296-2215  
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 82- 122

Michael F. Willcott  
Attorney at Law  
419 Shawnee Street  
Leavenworth, Kansas 66048

Re: Bonds and Warrants--General Bond Law--Temporary Notes  
for Improvements

Synopsis: A temporary note, issued by a municipality under the provisions of K.S.A. 1981 Supp. 10-123, constitutes a "bond" of that municipality for the purposes of K.S.A. 10-131, governing investment of the proceeds of certain bond issues. Pursuant to K.S.A. 10-131 the governing body of a municipality may make deposits of temporary note proceeds in commercial banks or trust companies located in the county or counties in which the municipality is located. Cited herein: K.S.A. 1981 Supp. 10-123, 10-131.

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Dear Mr. Willcott:

As city attorney of Lansing, you have inquired of this office whether the city of Lansing may deposit temporary note proceeds in banks located outside the city of Lansing, in order to obtain the best possible interest rate on the investment. You also advise that there is only one bank located within the city limits, and it is presently used as the regular city depository.

Pertinent to your inquiry is K.S.A. 1981 Supp. 10-131, which states in part:



"The governing body of any municipality, as defined in K.S.A. 10-101 which has heretofore issued or may hereafter issue bonds for any purpose, is hereby authorized and empowered to invest any portion of the proceeds of said bonds, which is not currently needed, in investments authorized by K.S.A. 1980 Supp. 12-1675 . . . or in interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the municipality is located." (Emphasis added.)

Clearly, the above provisions of the general bond law authorize the investment of bond proceeds in commercial banks located outside the corporate limits of Lansing, but within the boundaries of Leavenworth County. However, the statute is silent as to the investment of temporary note proceeds, and the question for our determination is whether the authority provided by K.S.A. 1981 Supp. 10-131 for the investment of bond proceeds implicitly applies to the investment of proceeds of temporary notes, as well.

Temporary notes are authorized by the general bond law in K.S.A. 1981 Supp. 10-123, which states:

"If a municipality shall have theretofore duly authorized the making of an improvement which is to be paid for in whole or in part by the issuance of bonds, then the governing body of such municipality may issue temporary notes, bearing interest at a rate not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, payable semiannually, maturing not later than the due date of the first installment of such bonds, or four (4) years from the date of said notes whichever is sooner, not exceeding in the aggregate the amount of bonds which are to be issued and are then unissued, as shown by the approved estimates on file (except in the case of road bonds when the amount of said notes shall not exceed the total amount of the unissued bonds and the state and federal aid granted to said project), but any municipality may issue renewal temporary notes to pay for the cost of taking up any previously issued temporary notes as they mature when the improvement will not be completed at the maturity date of such notes or when the municipality has completed the improvements and the issuance of bonds is prevented, hindered or delayed by reason of any court order or litigation.

"Said temporary notes shall be in the form usual for such bonds, except that coupons evidencing the interest need not be attached and the entire temporary note shall be contained on one sheet of paper. Such notes shall be executed and registered as are such bonds, and shall be redeemed and canceled before or at the time permanent bonds are issued in lieu thereof, so that the amount of temporary notes and bonds issued and outstanding shall not at any time exceed the estimated cost and expense of said improvement. Said temporary notes may be issued from time to time, as required during the progress of said work, shall be negotiable and shall constitute a general obligation of the municipality issuing the same. Said temporary notes shall not be negotiable until countersigned, following registration, by the clerk of the issuing municipality, and a statement to that effect shall appear on the face of all such temporary notes. Such temporary notes may be sold in the manner provided for the sale of bonds or may be sold at private sale at not less than par and accrued interest."

Although temporary notes are separate, negotiable instruments, it is evident from the provisions of K.S.A. 1981 Supp. 10-123 that they are inextricably tied to a municipality's general obligation bonds. Such notes must be "in the form usual for bonds" (except for interest coupons), have the same maximum interest rate limitations as general obligation bonds and must be "executed and registered as are such bonds." Moreover, it is apparent that they are issued only in anticipation of receipt of the bond proceeds necessary to finance an improvement project of the municipality, and the proceeds of the notes are dedicated to the same purpose as are the proceeds of the bonds themselves.

Therefore, by considering K.S.A. 1981 Supp. 10-123 and 10-131 as statutes in pari materia, since they are both sections of the general bond law, we believe the legislature intended in K.S.A. 1981 Supp. 10-131 to authorize the investment of the proceeds of a municipality's general obligations which have been issued for an improvement project. Hence, it is appropriate to construe "bond proceeds," as used in this statute, so as to include proceeds of temporary notes issued in anticipation of the issuance of the bonds.

Our conclusion that temporary notes may be regarded as bonds for the purposes of K.S.A. 1981 Supp. 10-131 is consistent with a prior opinion of this office, which concluded that a municipality's

Michael F. Willcott  
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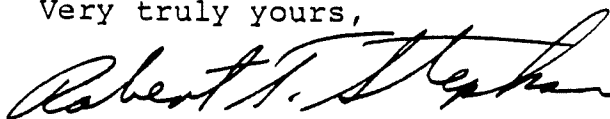
temporary note constituted a bond for the purposes of K.S.A. 1981 Supp. 9-1402. In VI Op. Att'y Gen. 76 (1973), it was stated:

"After reviewing the provisions of K.S.A. 10-123 relative to temporary notes of municipalities and considering the observations of the Court in The First State Bank v. Bone, 122 Kan. 493 (1927), we are of the opinion that a temporary note issued by a municipality under the provisions of 10-123, constitutes a 'bond' of that municipality for the purposes of 9-1402."

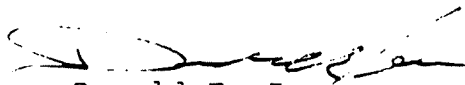
We concur in that opinion, and we find that the authorities cited in support of its rationale lend further credence to the conclusion reached herein.

In summary, it is our opinion that the guidelines established with respect to investment of proceeds of certain bond issues under K.S.A. 1981 Supp. 10-131 are equally applicable to proceeds of temporary notes issued pursuant to K.S.A. 1981 Supp. 10-123, and the governing body of a municipality may make deposits of temporary note proceeds in commercial banks or trust companies located in the county or counties in which the municipality is located.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Donald E. Jensen  
Assistant Attorney General

RTS:BJS:DEJ:jm



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TOPEKA

HOUSE OF  
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
 VICE-CHAIRMAN: LOCAL GOVERNMENT  
 MEMBER: EDUCATION  
 LABOR AND INDUSTRY

March 3, 1988

TO: House Committee Members of Commercial and Financial Institutions

Response to W. Newton Male

RE: House Bill 2892

1. This bill does not undermine the confidence of banks; obviously savings and loans continue to grow, and the depositor is insured by the FDIC.
2. No other alternative than to declare a bank insolvent; this bill provides one more alternative for the bank commissioner, loan loss amortization. There is nothing in 100-86 that say the state bank commissioner has to allow loan loss even if the FDIC approves the plan.
3. This bill does prohibit the sale of the bank to bigger banks which is the beauty of loan loss amortization, it allows the bank to retain local ownership.
4. Poorly managed banks; a 60 percent decline in agricultural land and a 50 percent decline in oil properties do not make for a bad manager. If the decline was only 20 percent in each case the commissioner may be right, but that has not happened.
5. The continued operation of an insolvent bank does not increase depositor risk; (1) the depositors are insured by the FDIC and (2) the bank is not insolvent because it is under loan loss.
6. Deposit withdrawal requests will not and have not been a factor in any bank closing in the state of Kansas.
7. This bill allows a bank to remain solvent, thus the violation for accepting deposits is not an issue, because the bank is solvent.

*RDm*

*Atch #2*