

Approved: March 24, 1995
Date

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Bill Bryant at 3:30 p.m. on March 20, 1995 in Room 527 S of the Capitol.

All members were present except:

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Lyn Goering, Attorney General's Office
Jo Lana Pinon, State Treasurer's Office

Others attending: See attached list

Action on SB 9--Public funds, municipal investment pool fund, pooled money investment board

J. Lyn Entrikin Goering, Assistant Attorney General, reviewed Attorney General Opinion No. 95-31 (Attachment 1). The opinion was issued at the request of Representative Lowther. Current legislation does not provide authority to the pooled money investment board to invest state idle funds in the municipal investment pool fund. The statutes do not permit the pooled money investment board to create an operating account in the municipal investment pool fund for the deposit of state idle funds. The statute does provide authority for the board to invest special funds which are non-custodial in the pool. These funds are those established by separate legislation that does not explicitly require the fund to be segregated from other accounts but which does provide separate investment authority to the pooled money investment board apart from the state moneys law, as well as requiring investment earnings to be credited directly to the fund. In response to a question regarding whether the investment of state idles funds in the MIP would be prudent, Mrs. Goering informed the Committee that the word "prudent" had not been defined in the statutes.

During Committee discussion, members expressed concern that by limiting the involvement of state idle funds, the investment pool could be seriously damaged. The bill as written would allow the overall provisions to go into effect upon publication with selected sections having different activating dates. The amendments clarify and define reporting dates and the experience requirements for board members. The idle funds have allowed liquidity in this fund. Much of the state's money is in overnight investments.

The State Treasurer's Office offered an amendment which would allow the investing of state idle funds in the MIP until July 1, 1996 (Attachment 2). On July 1, 1996, all state moneys invested in the municipal investment pool fund shall be removed from such fund.

Representative Donovan moved to accept the amendment. Motion was seconded by Representative Dawson. Representative Dawson added to his motion to strike all redundant sections. Representative Dawson rescinded her second and the entire motion was seconded by Representative Sawyer. Representative Donovan withdrew the last half of his motion regarding striking all redundant sections. Motion carried.

Representative Bryant proposed additional amendments regarding the comprehensive report to be prepared by the State Treasurer which would add language on Page 2, Line 19 "the weighted average maturity ratio of the fund, the original costs of the investments in the fund, including any fees associated with such investments..." (Attachment 3). The proposed amendments narrow the differential between the maturity of investments and the maturity of deposits recognizing that some interest income would be sacrificed in favor of greater safety and soundness considerations. Also addressed in the amendments is the conclusion that the municipal investment pool is not a permissible investment of state idle funds and all state idle funds must be removed from the pool by July 1, 1996.

During Committee discussion it was recognized that the MIP provides a service to communities and local money institutions when they cannot match the interest rates or handle the large amount of money involved. It

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,
Room 527S-Statehouse, at 9:00 a.m. on March 20, 1995.

was pointed out that none of the "clients" lost principal, only some received less interest than hoped. There may already be too many restrictions on the type of investments allowed which might be contributing to the lowered return on the money. Also questioned was the Treasurer's authority and judgment to use state funds to hedge against community funds. By accepting these amendments would the Legislature be attempting to micro-manage investments which are under the authority of the State Treasurer? No other state puts such restrictions on MIP investments. The Committee was reminded of the very low return on KPERS pool investments. The eventual abolishment of the MIP was discussed and what impact that would have on municipalities.

Representative Wilson moved to amend the bill as presented in the balloon in Attachment 3. The motion was seconded by Representative Landwehr. Representative Wilson declined to divide the amendments for vote. Representative Sawyer made a substitute motion to divide the motion. Motion was seconded by Representative Findley. Motion carried.

Representative Sawyer moved that the amendment regarding inclusion in the comprehensive report of information on the original costs of the investments in the fund, including any fees associated with such investments. Motion was seconded by Representative Findley. Motion carried 10-7. Representatives Sawyer, Gilbert, and Welshimer asked to be recorded as negative votes.

Representative Sawyer moved to pass the bill out favorably as amended. Motion was seconded by Representative Gilbert. Representative Cox issued a substitute motion to further amend the bill with the balance of the balloon found in Attachment 3. Motion was seconded by Representative Landwehr.

Representative Dawson moved that the bill be passed out as amended. Motion was seconded by Crabb. Motion carried. Representatives Sawyer, Welshimer, and Gilbert asked to be recorded as negative votes.

The meeting was adjourned at 5:25 p.m. The next meeting is scheduled for March 23, 1995.

HOUSE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE GUEST LIST

DATE: 3/20/95

NAME	REPRESENTING
Callie Denton	KID
Rebecca Floyd	AG
Syn Goering	AG's office
Kathy Taylor	KBA
Chuck Stones	"
Bill Caton	PM 113
JEFF SONNICH	KNOLSI
Anita Larson	Security Benefit Group
Jane Orin	State Treasury
LARRY MAGILL	KAIA
David Hanson	Ks Life Insur Assoc
Anne Spiess	Ks. Assoc of Counties
Jim Mauer	KBA
Jim Rector	Ks Assn of Counties



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March 13, 1995

ATTORNEY GENERAL OPINION NO. 95- 31

The Honorable James E. Lowther
State Representative, 60th District
Chairman, Legislative Post Audit Committee
State Capitol, Room 183-W
Topeka, Kansas 66612

Re: State Departments; Public Officers and Employees --
State Moneys -- Pooled Money Investment Board;
Investment of State Moneys in Municipal Investment
Pool Fund

Synopsis: Under the state moneys law, K.S.A. 75-4201 et seq., the pooled money investment board is charged with the responsibility of managing and investing state moneys, except as otherwise provided by statute. The municipal investment pool fund established by K.S.A. 1994 Supp. 12-1677a is not a permissible investment of state idle funds as that term is herein defined. However, K.S.A. 1994 Supp. 75-4263 does authorize the pooled money investment board to invest special funds, as herein defined, in the municipal investment pool. The pooled money investment board stands in the role of a fiduciary with regard to the various state moneys it is charged to invest. As such, the board has a separate duty of loyalty to the respective beneficiaries of each fund or pool it manages. Cited herein: K.S.A. 1994 Supp. 12-1675; 12-1677a; 40-3403; K.S.A. 40-3406; 74-8901; K.S.A. 1994 Supp. 74-8920; K.S.A. 75-704; K.S.A. 1994 Supp. 75-4201; 75-4205; 75-4208; 75-4209; K.S.A.

James E. Lowther

Attachment 1

3-20-95

75-4210a; K.S.A. 1994 Supp. 75-4213; 75-4221a;
75-4222; 75-4263.

* * *

Dear Representative Lowther:

As the chairman of the legislative post audit committee, you have requested our opinion regarding the legality of investing state idle funds in the municipal investment pool fund. Specifically, you ask whether investment of state idle funds in the municipal investment pool would be legal and prudent under the investment policies adopted by the pooled money investment board.

You raise this question in the wake of the recent decision of the pooled money investment board to amend its policy governing the investment of state idle funds to expressly permit investment of such funds in the municipal investment pool. As amended on January 30, 1995, the board's policy permits investment of up to 20 percent of the state's idle funds or \$250 million, whichever is the lesser amount, in the municipal investment pool.

The board's policy amendment followed the recent release of a performance audit report by the legislative division of post audit which examined the investment practices of the municipal investment pool fund. You enclosed a copy of the performance audit report with your opinion request. In addition, you provided us with a copy of a legal opinion issued January 27, 1995 by the department of administration legal section. Finally, you submitted a copy of the written policy of the pooled money investment board for investing state idle funds, in its form prior to the board's recent amendment. The state treasurer's office has supplied us with the portion of the minutes reflecting the board's decision to amend its written policy.

The state treasurer's office has also provided us a copy of a proposed resolution that was submitted for the board's consideration but that was not approved. The proposed resolution would have directed the deposit of state idle funds in the municipal investment pool in an unspecified amount not to exceed the limitations noted above. Also, the state treasurer's office has submitted a copy of the Report on the State of Kansas Municipal Investment Pool dated January 24, 1995, prepared by William M. Mercer Asset Planning, Inc. The Mercer report was prepared to fulfill the

statutory requirement that the office annually contract for a performance review of investments in the municipal investment pool fund. See K.S.A. 1994 Supp. 12-1677a(g). Finally, the state treasurer has provided us with copies of published financial reports for fiscal year 1994.

We begin with a brief summary of the pertinent legislative history. Following a 1991 interim study by the legislative budget committee, the 1992 legislature made comprehensive revisions to statutes dealing with public moneys. See generally Report on Kansas Legislative Interim Studies to the 1992 Legislature (Kansas Legislative Research Department, December 1991), Re: Proposal No. 17 -- Idle Funds Investments (hereinafter "1991 Interim Study Report"). By enactment of 1992 senate bill no. 480 (L. 1992, ch. 146) the legislature established the municipal investment pool fund in the state treasury and delegated the responsibility for management and investment of moneys in the fund to the pooled money investment board. See K.S.A. 1994 Supp. 12-1677a(a), (b), (i). The statutes impose specific restrictions and conditions on the board's authority to invest moneys deposited in the fund. See K.S.A. 1994 Supp. 12-1677a(b), (f), (h), (j).

The municipal investment pool fund was created for the purpose of providing an additional option to specified local governmental entities for investing moneys not immediately required for the purpose for which they were collected or received, generally known as "idle funds." See K.S.A. 1994 Supp. 12-1675(a), (b)(6). By pooling their idle funds for investment, municipalities were offered the opportunity to benefit from such advantages as economies of scale, professional investment expertise, increased diversification, and greater liquidity. Pursuant to the authorizing legislation, interest earnings on the municipal investment pool fund are credited to the individual accounts of the participating municipalities on a prorated basis. K.S.A. 1994 Supp. 12-1677a(c). Gains realized from the disposition of investments are to be deposited in a reserve fund, from which transfers are to be made to offset losses to the pool fund. K.S.A. 1994 Supp. 12-1677a(d).

Under a separate set of preexisting statutes known as the state moneys law, K.S.A. 75-4201 et seq., the pooled money investment board is also charged with the general responsibility for managing and investing state moneys. K.S.A. 1994 Supp. 75-4201 specifically defines certain terms used in that act. "State moneys" is defined to include all moneys in the treasury of the state or coming lawfully into

Page 4

the possession of the state treasurer. K.S.A. 1994 Supp. 75-4201(e). The term therefore includes moneys deposited with the state treasurer for investment in the municipal investment pool fund, as provided by K.S.A. 1994 Supp. 12-1677a(a). However, because the latter statute contains specific provisions governing the pooled money investment board in managing investments of the municipal investment pool, the separate and different provisions of the state moneys law dealing with investments do not apply to that fund.

The term "state idle funds" is notably absent from the terms defined by the state moneys law. However, other categories of state moneys are specifically defined. For example, "custodial moneys" are "state moneys deposited with the treasurer which, in the written opinion of the attorney general, are required by contract, bequest, or law to be segregated from other bank accounts." See K.S.A. 1994 Supp. 75-4201(f). One clear example of a custodial account is the health care stabilization fund, which by statute must be held in trust in a segregated fund in the state treasury, with interest credited directly to the fund. See K.S.A. 1994 Supp. 40-3403(a); K.S.A. 40-3406. Bond proceeds, reserve funds, and surplus funds may also be considered custodial moneys if the particular agreement, indenture, or resolution authorizing their issuance requires such moneys to be maintained in segregated accounts. On a number of occasions, the attorney general has issued written opinions determining that particular moneys must be deposited in custodial accounts, with the interest earnings credited to those accounts. See, e.g., Attorney General Opinions No. 81-195 (funds generated from operations of university dormitories financed with bond revenues); 81-201 (employment security fund); 82-202 (Kansas fish and game commission mined-land donation fund). K.S.A. 1994 Supp. 75-4213 provides that the chairperson of the pooled money investment board shall request such an opinion from the attorney general under certain circumstances, and generally restricts investments of custodial moneys to demand or interest-bearing deposits and certain kinds of repurchase agreements. However, statutes that specifically establish custodial funds may provide somewhat different investment authority, as is the case with the health care stabilization fund. See K.S.A. 40-3406. The state moneys law specifically excludes custodial accounts from moneys otherwise eligible for investment under that act. K.S.A. 1994 Supp. 75-4201(j), 75-4209(a).

Under the state moneys law, interest earnings on state moneys are credited to the state general fund except as otherwise

required by contract, law, or bequest. K.S.A. 75-4210a. Custodial accounts are one exception to this general rule. In addition, a number of separate statutes establish specific funds to be used by particular state agencies or public entities for special purposes, the investment of which is delegated to the pooled money investment board with interest earnings and investment income accruing directly to the specific fund. These are commonly known as "special funds." See 1991 Interim Study Report. The statutes establishing such funds also prescribe the particular manner in which moneys in those funds may be invested, which differs from the investment methodology set forth in the state moneys law. See, e.g., K.S.A. 68-2324 (state highway fund); K.S.A. 1994 Supp. 79-4804 (economic development initiatives fund). In our opinion, the municipal investment pool fund fits within the category of special funds. We note that the legal distinction between "custodial moneys" as defined by K.S.A. 1994 Supp. 75-4201(f) and the term "special fund" as it has been commonly used is not entirely clear. In general, however, the statute or instrument establishing a custodial fund or account must clearly provide, in unequivocal language, that moneys deposited in the fund must be segregated from other moneys in the state treasury. See Attorney General Opinions No. 81-201; 85-128.

*State Highway
Custodial Funds*

Thus, the general term "state moneys" includes three primary categories. The first and narrowest category, defined in the statute as "special moneys," includes "custodial moneys" which as a matter of law must be deposited in a segregated fund and separately invested, with interest earnings credited directly to the fund itself. See K.S.A. 1994 Supp. 75-4201(f) (defining "custodial moneys"); (g) (defining "special moneys"); (m) (defining "custodial account"); K.S.A. 1994 Supp. 75-4213 (deposit and investment of custodial accounts). The second category is generally known as "special funds." These non-custodial funds are expressly established by statute apart from the state moneys law, and their investment is separately delegated to the pooled money investment board, with interest earnings credited directly to the special fund. The investment of moneys deposited in such funds is typically subject to restrictions imposed by the same set of statutes that create the special fund itself. The third and most general category includes all other state moneys for which specific investment authority is not otherwise provided by statute, and which are therefore invested by the board pursuant to the state moneys law, with the interest earnings and other income generally credited to the state general fund pursuant to K.S.A. 75-4210a. This category also includes

numerous separate funds in the state treasury for which special investment authority does not exist, but the law nevertheless provides that a proportionate amount of interest generated to the state general fund must be transferred monthly to the credit of the separate fund. See, e.g., K.S.A. 32-992(a)(1), (b) (wildlife conservation fund). As we understand the term "state idle funds" as used by the board in its written investment policy, the term refers only to surplus moneys in the third and most general category of "state moneys."

Because investment decisions regarding both state idle funds and moneys in the municipal investment pool fund are statutorily delegated to the pooled money investment board, an understanding of the statutory structure and functions of the board is also important to provide the context for our response to your questions.

Under present law, as amended in 1992, the pooled money investment board is composed of five members. Four members are appointed by the governor to staggered four-year terms, subject to confirmation by the senate. K.S.A. 1994 Supp. 75-4221a(a). By statute, the state treasurer serves as the fifth member. Id. Effective July 1, 1992, at least three of the members appointed by the governor must each have at least five years of work experience as an investment or trust officer, or must be professionally qualified as a certified public accountant or a certified financial planner. Id.

The state treasurer is designated by law to chair the pooled money investment board. K.S.A. 1994 Supp. 75-4222(b). Effective July 1, 1992, the legislature shifted responsibility for the administrative supervision and control of the board from the secretary of administration to the state treasurer. L. 1992, ch. 261 § 1(d). Consequently, under present law the board's budgeting, purchasing, and related management functions are generally carried out by the state treasurer. K.S.A. 1994 Supp. 75-4222(d). Also effective July 1, 1992, the board has statutory authority to appoint investment officers and investment analysts, who by law must be in the unclassified civil service. L. 1992, ch. 261, § 1(b); see K.S.A. 1994 Supp. 75-4222(b).

Thus, the pooled money investment board is now more closely aligned with the state treasurer's office than it was prior to July 1, 1992. Nevertheless, the state treasurer is but one of five members of the pooled money investment board, and decisions regarding investments are delegated by statute not

to the state treasurer acting alone, but to the five-member board.

With this background in mind, we address your first inquiry in terms of whether the pooled money investment board may lawfully take action to invest state idle fund moneys in the municipal investment pool fund. As we understand the facts, the board itself has not directed such an investment; rather, the board's action on January 30, 1995 simply amended its investment policy for state idle funds to expressly add the municipal investment pool fund to the list of permitted investments. We have been advised, however, that the state treasurer has initiated investments of state idle fund moneys in the municipal investment pool, beginning January 30, 1995.

The legislature has expressly authorized certain kinds of governmental entities to invest their idle funds in the municipal investment pool fund established by K.S.A. 1994 Supp. 12-1677a:

"The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any 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." K.S.A. 1994 Supp. 12-1675(a) (emphasis added).

As previously discussed, the 1992 legislature added the municipal investment pool fund to the statutory list of options available to such governmental entities for investing their idle funds. See K.S.A. 1994 Supp. 12-1675(b)(6).

In our opinion, K.S.A. 1994 Supp. 12-1675, standing alone, does not provide authority to the pooled money investment board to invest state idle funds in the municipal investment pool fund. While the pooled money investment board is a governmental entity in the state of Kansas with the statutory authority to receive, hold, and expend state moneys, the

board's authority to invest state moneys is subject to and regulated by other statutes, in particular K.S.A. 75-4201 et seq., the state moneys law. Further, the board's authority to invest special funds is governed by the particular statutes establishing them. Therefore, state moneys, including state idle funds, are excluded from the scope of K.S.A. 1994 Supp. 12-1675(a) by the terms of the final clause of that subsection.

We next turn to K.S.A. 75-4201 et seq., the state moneys law. Under these statutes, the pooled money investment board is required to designate banks to receive deposits of state moneys in state "operating accounts," which are those payable on demand, and state "investment accounts," which by definition are not payable on demand. See K.S.A. 1994 Supp. 75-4201(i), (j) (defining terms); 75-4208 (procedures for designating banks). Because operating accounts must be exclusively established in banks, see K.S.A. 1994 Supp. 75-4205, 75-4208, the statutes do not permit the pooled money investment board to create an operating account in the municipal investment pool fund for the deposit of state idle funds.

The next question is whether the board may establish an investment account in the municipal investment pool for state idle funds. K.S.A. 1994 Supp. 75-4209 sets forth the procedures to be undertaken by the pooled money investment board prior to investing "eligible moneys," or more loosely state idle funds, in investment accounts. After making certain determinations of investment policy pursuant to rules and regulations, the board is required to offer such state moneys to qualified banks on a competitive basis, at maturities no longer than four years. K.S.A. 1994 Supp. 75-4209(a)(1), (g). The remainder of such eligible moneys may be invested by the board as provided in the statute, which lists a number of investment alternatives including U.S. government securities; repurchase agreements; SKILL act projects; state agency bonds and bond projects under certain circumstances; preferred stock of Kansas venture capital, inc., not to exceed \$ 10 million; and loans pursuant to legislative mandates, not to exceed the lesser of 10 percent of state moneys eligible for investment, or \$ 80 million. We find no language in K.S.A. 1994 Supp. 75-4209 that would permit the board to create "investment accounts" for state idle funds in the municipal investment pool fund.

1994 statute
MIP

The maxim of statutory interpretation known as "expressio unius est exclusio alterius" teaches that when a statute

specifies certain things, it may be inferred that things not mentioned were intentionally excluded. Breedlove v. General Baking Co., 138 Kan. 143, 145 (1933); Black's Law Dictionary 581 (6th ed. 1990). While application of the rule is not conclusive, Kansas courts have sanctioned its use as an auxiliary rule of statutory construction if legislative intent is not otherwise clear. See Johnson v. General Motors Corp., 199 Kan. 720, 722 (1967). We think the rule is particularly applicable in construing K.S.A. 1994 Supp. 75-4209, because the statute has been the recent subject of comprehensive review and amendment by the legislature for the very purpose of expanding the board's authority to place state idle moneys in particular kinds of investments. We therefore conclude that the alternatives listed in K.S.A. 1994 Supp. 75-4209 for the investment of state idle funds, more specifically defined in the statute as state moneys "eligible for investment accounts," are intended by the legislature to be exclusive options. Because the municipal investment pool fund is not listed therein, K.S.A. 1994 Supp. 75-4209 does not authorize the board to invest state idle funds in the pool.

Finally, we turn to K.S.A. 1994 Supp. 75-4263, the statute upon which department of administration counsel relied in concluding that the board may invest state idle funds in the municipal investment pool. The cited statute reads as follows:

"Moneys of a state agency or public instrumentality of this state which may be invested by the pooled money investment board expressly for such agency or instrumentality, or invested directly by the agency or instrumentality, may be invested in the municipal investment pool fund established in K.S.A. 1994 Supp. 12-1677a and amendments thereto. Such agency or instrumentality shall be treated as a municipality for purposes of participation in such fund." K.S.A. 1994 Supp. 75-4263.

The language of this provision, as it pertains to moneys invested by the pooled money investment board, appears to include only those moneys held by the board for a particular agency, rather than state idle funds in general. Since the intended meaning of the statute is susceptible of more than one construction and is certainly not clear, it is appropriate to consult the legislative history to determine the

legislature's intent. See Boatright v. Kansas Racing Comm., 251 Kan. 240, Syl. ¶ 6 (1992); Jackson v. City of Arkansas City, 235 Kan. 278, 318 (1984).

The statute was enacted by the 1993 legislature as new section 10 of 1993 senate bill 139 (L. 1993, ch. 207, § 10). The bill was introduced at the request of the state treasurer by the senate committee on financial institutions and insurance. In addition to making a number of technical and clarifying amendments to the comprehensive legislation on public moneys enacted the previous legislative session, sections 6 and 9 of the bill conferred new authority to the pooled money investment board to invest state idle funds in "state of Kansas investments in lifelong learning" (SKILL) act projects and bonds, financed by the Kansas development finance authority. See K.S.A. 74-8901 et seq., K.S.A. 1994 Supp. 74-8920. Section 6 of the bill specifically amended K.S.A. 1992 Supp. 75-4209 to add such projects to the list of authorized options for investment of state idle funds. Section 9, now codified at K.S.A. 1994 Supp. 74-8920, set forth certain conditions to be met for such projects and bonds to be eligible for investment by the board.

Section 10 was not part of the bill originally introduced at the request of the state treasurer. After an initial hearing was held on the bill on February 3, 1993, it was referred to a subcommittee for study. On February 17, 1993, the subcommittee submitted proposed balloon amendments to the committee, including new section 10. The committee adopted the suggested amendments, and the wording of section 10 remained intact throughout the legislative process until it was eventually enacted into law. Noticeably absent from the minutes of the house committee's meeting on February 17, 1993 are any remarks regarding the purpose or intent of new section 10.

The senate committee on financial institutions and insurance heard testimony on the bill on March 10, 1993. The state treasurer's written testimony to the committee included an explanation of how each section of the bill changed the laws as previously amended by 1992 senate bill 480, and designated the particular type of public moneys affected. Sections 6 and 9 of the bill were noted as affecting state idle funds, as were a number of other sections of the bill. Section 10, however, was described in the state treasurer's written testimony as follows:

"Section 10

Issue: Allows for use of the Municipal Investment Pool by certain state agencies.

Type: State Special Funds" (Emphasis in original.)

In another document presented to the senate committee, the state treasurer described section 10 simply as follows: "This change allows agencies or instrumentalities with express investment authority to utilize the Municipal Investment Pool." In the committee minutes of the hearing, the bill is described as follows:

"This bill relates to the investment of idle funds of local governments and the state. Two new statutes would allow participation in the Municipal Investment Pool Fund by certain state agencies and instrumentalities of this state and would permit state moneys to be reinvested in specified projects and bonds." (Emphasis added.)

Absent any other evidence of legislative intent to the contrary, the state treasurer's written testimony to the senate committee regarding the impact of section 10 supports our conclusion that the legislature intended it to apply only to those state moneys generally known as special funds. See 1991 Interim Study Report. In addition, the statute was intended to clarify that agencies and public instrumentalities with authority to directly invest their funds, such as the development finance authority, may invest those funds in the municipal investment pool. See, e.g., K.S.A. 1994 Supp. 74-8904(n). We conclude that while K.S.A. 1994 Supp. 75-4263 does not authorize the pooled money investment board to invest state idle funds in the municipal investment pool fund, it does provide authority for the board to invest special funds in the pool.

We have carefully considered the opinion rendered by the department of administration attorney, and we believe his more generous interpretation of K.S.A. 1994 Supp. 75-4263 is a plausible construction if the statute is read literally and in isolation. However, as the Kansas supreme court has consistently stated, the fundamental rule of statutory interpretation, to which all others are subordinate, is to ascertain the intent of the legislature. E.g., City of

Wichita v. 200 South Broadway, Ltd. Partnership, 253 Kan. 434, 436 (1993); West v. Collins, 251 Kan. 657, 661 (1992). In interpreting legislative intent, we are not limited to the language of the statute, but may consider such factors as its historical background, the circumstances attending its passage, and the purpose it was intended to accomplish. Id. at 666. Further, in construing statutes, the legislative intent must be determined from a general consideration of the entire act. If possible, effect must be given to all parts of the act, and its various provisions must be reconciled to make them consistent, harmonious, and sensible. United Steelworkers of America, Local No. 4706 v. Kansas Comm. on Civil Rights, 253 Kan. 327, 330 (1993); State ex rel. Stephan v. Kansas Racing Comm., 246 Kan. 708, 719 (1990); see Havens v. Board of Adult Care Home Administrators, 17 Kan.App.2d 527, 529, rev. denied, 252 Kan. 1091 (1992).

Applying these canons of statutory construction to section 10 of L. 1993, ch. 359, we believe the only sensible interpretation of the statute, in the context of the entire act of which it was a part, is that it authorizes the board to invest only state special funds in the municipal investment pool fund. If the legislature had intended to authorize investment of state idle funds in the municipal investment pool fund, it could easily have done so in the same act simply by adding an additional subdivision to K.S.A. 75-4209(a)(2), just as it did to expressly permit investments of state idle funds in SKILL act projects and bonds.

We conclude that the board is authorized by K.S.A. 1994 Supp. 75-4263 to invest "state moneys" in the municipal investment pool, but only insofar as the term refers to moneys deposited in special funds. Special funds are those established by separate legislation that does not explicitly require the fund to be segregated from other accounts, but which does provide separate investment authority to the pooled money investment board apart from the state moneys law, as well as requiring investment earnings to be credited directly to the fund.

It is important to understand the implications of the distinction we draw between special funds and state idle funds. If the board decides to invest surplus balances in any special fund in the municipal investment pool pursuant to the authority conferred by K.S.A. 1994 Supp. 75-4263, interest earnings to the pool must be credited to each special fund so invested. This is because the last sentence of that statute provides that the state agency or public instrumentality for which the board invests those funds is deemed a municipality

for purposes of K.S.A. 1994 Supp. 12-1677a. Furthermore, any gains realized on investments of special fund moneys in the pool would be transferred to the municipal investment pool reserve fund and would therefore not accrue directly to the benefit of the special fund. Finally, K.S.A. 1994 Supp. 12-1677a(d) permits the state treasurer to assess up to one percent of any interest earnings on the municipal investment pool fund for reimbursement of expenses of administering the fund. If state idle funds were authorized for investment in the municipal investment pool, these factors would affect interest and other income that would otherwise accrue to the state general fund under K.S.A. 75-4210a. However, the investment of special fund moneys in the municipal investment pool would have no effect on the state general fund.

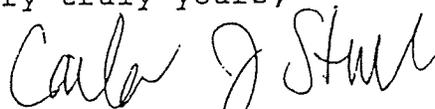
You have also asked whether an investment of state idle funds in the municipal investment pool would be prudent. Whether a specific investment complies with any particular variation of the prudent man standard is an issue of fact, the determination of which is not within the scope of our statutory duty in issuing this opinion. See K.S.A. 75-704; III Scott, The Law of Trusts, § 227.1, at 436 (4th ed. 1988). Moreover, because we have determined that the applicable statutes do not permit the investment of state idle funds in the municipal investment pool fund, the prudence of such an investment is a moot issue.

Your letter also suggests the possibility of a breach of fiduciary duty. We agree that the pooled money investment board stands in the role of a fiduciary in the exercise of its duty to invest state idle funds, state special funds, and the municipal investment pool. As such, the board's investment decisions are governed by the general common law duties applicable to all trustees. In particular, the board has a separate duty of undivided loyalty to the various government beneficiaries of each fund to act solely within their best interests. See generally Bogert, The Law of Trusts and Trustees, § 612 (rev. 2d ed. 1980); III Scott, supra, § 227.16; Restatement (Second) of Trusts § 170 comment r (1959); Restatement (Third) of Trusts § 170 comment r (1990). Specifically, the board's duty of loyalty to each fund requires that any transaction undertaken between them must be justified as fair to both. Id.

In summary, we conclude that the municipal investment pool fund is not a permissible investment of state idle funds, as that term is herein defined. However, K.S.A. 1994 Supp. 75-4263 does authorize the pooled money investment board to

invest state special funds in the municipal investment pool. Special funds are non-custodial funds established by state statutes for a particular purpose, the investment of which is separately delegated to the pooled money investment board apart from the state moneys law, with interest earnings and other income accruing directly to the fund. As a fiduciary with regard to the various funds it invests, the pooled money investment board has a separate duty of loyalty to the respective beneficiaries of each of those funds.

Very truly yours,



CARLA J. STOVALL
ATTORNEY GENERAL OF KANSAS



J. Lyn Entrikin Goering
Assistant Attorney General

CJS:JLM:LEG:bas

CHAPTER 207

Senate Bill No. 139

AN ACT relating to public funds; bonds of the Kansas development finance authority; financing state agency projects and SKILL act projects; amending K.S.A. 9-1405, 65-3415a and 74-5086a and K.S.A. 1992 Supp. 12-1675, 12-1677a, 12-1677b, 75-4201, 75-4209, 75-4212a and 75-4213 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 9-1405 is hereby amended to read as follows: 9-1405. (a) All bonds and securities given by any bank, state or federally chartered savings and loan association or federally chartered savings bank to secure public moneys of the United States or any board, commission or agency thereof, shall be deposited as required by the United States government or any of its designated agencies.

(b) All bonds and securities pledged to secure the deposits of any municipal corporation or quasi-municipal corporation shall be deposited with a Kansas state or national bank or trust company having adequate modern facilities for the safekeeping of securities ~~or~~, the federal home loan bank of Topeka *or with the state treasurer*, and a joint custody receipt taken therefor with one copy going to the municipal corporation or quasi-municipal corporation making the public deposit and one copy going to the bank, state or federally chartered savings and loan association or federally chartered savings bank which has secured such public deposits. No bonds or securities pledged to secure public deposits shall be left for safekeeping in any safe deposit vault owned or controlled directly or indirectly by the bank, state or federally chartered savings and loan association or federally chartered savings bank securing such public deposits. *When bonds and securities are deposited with the state treasurer as authorized by this subsection, the state treasurer shall make a charge for such service which is equivalent to the reasonable and customary charge made therefor.*

(c) All such bonds and securities shall be deposited under a joint custody receipt issued by a bank within the state of Kansas or the federal reserve bank of Kansas City ~~or~~, the federal home loan bank of Topeka *or with the state treasurer*. All bonds or securities held by any depository and for which a joint custody receipt has been issued shall be retained by such depository and not released except upon consent of both the municipal corporation or quasi-municipal corporation making the deposit and the bank, state or federally chartered savings and loan association or federally chartered savings bank taking or securing such deposit. In every report required to be published by any bank, state or federally chartered savings and loan association or federally chartered savings bank it shall show in full

all of the assets pledged or deposited as security for public moneys. (d) A bank, state or federally chartered savings and loan association or federally chartered savings bank which fails to pay according to its terms any deposit of public moneys of any municipal or quasi-municipal corporation shall immediately take such actions as are required to enable bonds and securities pledged to secure such deposit to be sold to satisfy its obligation to the municipal or quasi-municipal corporation.

Sec. 2. K.S.A. 1992 Supp. 12-1675 is hereby amended to read as follows: 12-1675. (a) The governing body of any county, city, township, school district, area vocational-technical school, community college, firemen's relief association, community mental health center, community facility for the mentally retarded or any 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.

(b) Such moneys shall be invested only:

(1) In temporary notes or no-fund warrants issued by such investing governmental unit;

(2) in time deposit, open accounts or certificates of deposit with maturities of not more than two years: (A) In commercial banks which have offices located in such investing governmental unit; or (B) if the office of no commercial bank is located in such investing governmental unit, then in commercial banks which have offices in the county or counties in which all or part of such investing governmental unit is located;

(3) in time certificates of deposit with maturities of not more than two years: (A) With state or federally chartered savings and loan associations or federally chartered savings banks which have offices located in such investing governmental unit; or (B) if the office of no state or federally chartered savings and loan association or federally chartered savings bank is located in such governmental unit, then with state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the county or counties in which all or part of such investing governmental unit is located;

(4) in repurchase agreements with: (A) Commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices located in such investing governmental unit, for direct obligations of, or obligations that are insured as to principal and interest by, the United States government

or any agency thereof; or (B) (i) if the office of no commercial bank, state or federally chartered savings and loan association or federally chartered savings bank is located in such investing governmental unit; or (ii) if no commercial bank, state or federally chartered savings and loan association or federally chartered savings bank has an office located in such investing governmental unit is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (l) of K.S.A. 75-4201, and amendments thereto, then such repurchase agreements may be entered into with commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the county or counties in which all or part of such investing governmental unit is located; or (C) if no bank, state or federally chartered savings and loan association or federally chartered savings bank which has its office in such county or counties is willing to enter into such an agreement with the investing governmental unit at an interest rate equal to or greater than the investment rate, as defined in subsection (l) of K.S.A. 75-4201, and amendments thereto, then such repurchase agreements may be entered into with commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the state of Kansas;

(5) in United States treasury bills or notes with maturities as the governing body shall determine, but not exceeding two years. Such investment transactions shall only be conducted with the following, which is doing business within the state of Kansas, any state or national bank, state or federally chartered savings and loan association, or federally chartered savings bank; *the federal reserve bank of Kansas City, Missouri*; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York, or any broker-dealer *engaged in the business of selling government securities* which is registered in compliance with the requirements of section 15 or 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-1254, and amendments thereto;

(6) in the municipal investment pool fund established in K.S.A. 1992 Supp. 12-1677a *and amendments thereto*;

(7) in the investments authorized and in accordance with the conditions prescribed in K.S.A. 1992 Supp. 12-1677b *and amendments thereto*; or

(8) with the trust departments of commercial banks which have offices located in *the county or counties where* such investing governmental unit *is located* or with trust companies which have contracted to provide trust services under the provisions of K.S.A. 9-

2107, and amendments thereto, with commercial banks which have offices located in the county or counties in which such investing governmental unit is located. Public moneys invested under this paragraph shall be secured in the same manner as provided for under K.S.A. 9-1402, and amendments thereto. Investments of public moneys under this paragraph shall be limited to those investments authorized under subsection (b) of K.S.A. 1992 Supp. 12-1677a *and amendments thereto*.

(c) The investments authorized in paragraphs (5), (6), (7) or (8) of subsection (b) shall be utilized only if the appropriate eligible commercial banks, which have offices located in the investing governmental unit or in the county or counties in which all or a part of such investing governmental unit is located if no such bank has an office which is located within such governmental unit, or the appropriate eligible state or federally chartered savings and loan associations or federally chartered savings banks, which have offices located in the investing governmental unit or in the county or counties in which all or a part of such investing governmental unit is located if no such state or federally chartered savings and loan association or federally chartered savings bank has an office which is located within such governmental unit, cannot or will not make the investments authorized in paragraph (2) or (3) of subsection (b) available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (l) of K.S.A. 75-4201, and amendments thereto.

(d) In selecting a depository pursuant to paragraph (2) or (3) of subsection (b), if a commercial bank, state or federally chartered savings and loan association or federally chartered savings bank has an office located in the investing governmental unit and such financial institution will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (l) of K.S.A. 75-4201, and amendments thereto, and such financial institution otherwise qualifies for such deposit, the investing governmental unit shall select one or more of such financial institutions for deposit of funds pursuant to this section. If no such financial institution qualifies for such deposits, the investing governmental unit shall select for such deposits one or more commercial banks, state or federally chartered savings and loan associations or federally chartered savings banks which have offices in the county or counties in which all or a part of such investing governmental unit is located which will make such deposits available to the investing governmental unit at interest rates equal to or greater than the investment rate, as defined in subsection (l) of K.S.A. 75-4201, and amendments thereto.

(l) of K.S.A. 75-4201, and amendments thereto, and which otherwise qualify for such deposits.

(e) (1) All security purchases shall occur on a delivery versus payment basis.

(2) All securities shall be perfected in the name of the investing governmental unit and shall be delivered to the purchaser or a third party custodian which may be the state treasurer.

Sec. 3. K.S.A. 1992 Supp. 12-1677a is hereby amended to read as follows: 12-1677a. (a) Moneys deposited by any municipality with the state treasurer for investment authorized in paragraph (6) of subsection (b) of K.S.A. 12-1675, and amendments thereto, shall be deposited in the municipal investment pool fund which is hereby created in the state treasury.

(b) The pooled money investment board may invest and reinvest moneys in the municipal investment pool fund in the following investments:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds, except that not more than 10% of the moneys available for investment under this subsection may be invested in mortgage backed securities of such enterprises and of the government national mortgage association;

(2) interest-bearing time deposits in any of the following, which is doing business within the state of Kansas, any state or national bank, state or federally chartered savings and loan association, or federally chartered savings bank; or

(3) repurchase agreements ~~of less than 30 days' duration~~ with a Kansas bank, Kansas savings and loan association, a federally chartered savings bank having an office or offices in the state of Kansas or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds.

(c) All interest earnings received from investments of money in the municipal investment pool fund shall be credited to the municipal investment pool fund. Interest earnings experienced by the fund on investments attributable to each participating municipality shall be prorated and applied to the individual accounts of the municipalities,

maintained by the state treasurer. Deferred earnings transferred from the municipal investment pool reserve fund to the municipal investment pool fund shall be prorated and applied to the individual accounts of the municipalities, maintained by the state treasurer. A statement for each municipality participating unit account showing deposits, withdrawals, earnings and losses distributions shall be provided periodically to the municipality. The state treasurer shall make comprehensive reports to those municipalities participating in the municipal investment pool fund, including a summary of transactions for the period as well as the current market value of the pool investments.

(d) The state treasurer may assess reasonable charges not to exceed 1% of the interest earned against the fund for reimbursement of expenses incurred in administering the fund. The state treasurer shall certify, periodically, the amount of the assessment and the director of accounts and reports shall transfer the amount certified from the municipal investment pool fund to the municipal investment pool fund fee fund, which is hereby created. All expenditures from the municipal investment pool fund fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state treasurer or a person or persons designated by the state treasurer. Amounts of gains realized on disposition of investments of the municipal investment pool fund shall be periodically certified by the state treasurer, and the director of accounts and reports shall transfer the amount certified from the municipal investment pool fund to the municipal investment pool reserve fund which is hereby created in the state treasury. The state treasurer shall make a determination of the amount needed for a reserve for possible losses to the municipal investment pool fund and shall certify periodically such amount, and the director of accounts and reports shall transfer the amount so certified from the municipal investment pool fund fee fund to the municipal investment pool reserve fund. If the state treasurer makes a determination that significant losses or gains have occurred to the municipal investment pool fund, the state treasurer shall certify the amount thereof to the director of accounts and reports, and the director of accounts and reports shall transfer the amount so certified from the municipal investment pool reserve fund to the municipal investment pool fund.

(e) The state treasurer may adopt rules and regulations necessary to carry out the provisions of this section and may enter into agreements with any municipality as to methods of deposits, withdrawals and investments.

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(f) Investments under ~~paragraphs (1) and (2)~~ of subsection (b) shall be for a period of not to exceed four years, except for mortgage backed securities.

(g) A comparative investment performance review shall be contracted for annually by the state treasurer's office.

(h) Deposits in the municipal investment pool fund may only be made for the same maturity as the maturity which is offered under paragraphs (2) and (3) of subsection (b) of K.S.A. 12-1675 and amendments thereto.

(i) Moneys and investments in the municipal investment pool fund shall be managed by the pooled money investment board in accordance with investment policies provided by law and by rules and regulations of such board. The pooled money investment board shall not contract for management of investments by a money manager.

(j) Investments in securities under paragraph (1) of subsection (b) shall be limited to securities which do not have any more interest rate risk than do direct United States government obligations of similar maturities, except for the 10% limitation on mortgage-backed securities. For purposes of this subsection, "interest rate risk" means market value changes due to changes in current interest rates.

(k) For the purpose of this section, "municipality" means those entities specified in subsection (a) of K.S.A. 12-1675, and amendments thereto.

Sec. 4. K.S.A. 1992 Supp. 12-1677b is hereby amended to read as follows: 12-1677b. (a) The governing body of any city or county which has a written investment policy approved by the governing body of such city or county and approved by the pooled money investment board may invest and reinvest pursuant to the approved investment policy in the following investments, as authorized under paragraph (7) of subsection (b) of K.S.A. 12-1675, and amendments thereto:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds, except that not more than 10% of the moneys available for investment under this subsection may be invested in mortgage backed securities of such enterprises and of the government national mortgage association;

(2) interest-bearing time deposits in any of the following, which is doing business within the state of Kansas, any state or national

bank, state or federally chartered savings and loan association, or federally chartered savings bank; or

(3) repurchase agreements of ~~less than 30 days' duration~~ with a Kansas bank, savings and loan association, a federally chartered savings bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds.

(b) The investment policy of any city or county approved by the pooled money investment board under this section shall be reviewed and approved at least annually by such board or when such city or county makes changes in such investment policy.

(c) City and county investment policies shall address liquidity, diversification, safety of principal, yield, maturity and quality, and capability of investment management staff.

(d) (1) All security purchases shall occur on a delivery versus payment basis.

(2) All securities shall be perfected in the name of the city or county and shall be delivered to the purchaser or a third party custodian which may be the state treasurer.

(3) Investment transactions shall only be conducted with the following, which is doing business within the state of Kansas, any state or national bank, state or federally chartered savings and loan association, or federally chartered savings bank; or with primary government securities dealers which report to the market report division of the federal reserve bank of New York; or any broker-dealer which is registered in compliance with the requirements of section 15C of the securities exchange act of 1934 and registered pursuant to K.S.A. 17-1254, and amendments thereto.

(4) The maximum maturity for investments under ~~paragraphs (1) and (2)~~ of subsection (a) shall be four years except for mortgage backed securities which shall have a maximum maturity of seven years and three months.

(e) Investments in securities under paragraph (1) of subsection (a) shall be limited to securities which do not have any more interest rate risk than do direct United States government obligations of similar maturities, except for the 10% limitation on mortgage-backed securities. For purposes of this subsection, "interest rate risk" means market value changes due to changes in current interest rates.

(f) A city or county which violates subsection (c) or (d) of K.S.A. 12-1675 and amendments thereto or the rules and regulations of the pooled money investment board shall forfeit its rights under this section for a two year period and shall be reinstated only after a complete review of its investment policy as provided for in subsection (b). Such forfeiture shall be determined by the pooled money investment board after notice and opportunity to be heard in accordance with the Kansas administrative procedure act.

Sec. 5. K.S.A. 1992 Supp. 75-4201 is hereby amended to read as follows: 75-4201. As used in this act, unless the context otherwise requires:

- (a) "Treasurer" means state treasurer.
- (b) "Controller" means director of accounts and reports.
- (c) "Board" means the pooled money investment board.
- (d) "Bank" means a state or national bank doing business within the state of Kansas.
- (e) "State moneys" means all moneys in the treasury of the state or coming lawfully into the possession of the treasurer.
- (f) "Custodial moneys" means state moneys deposited with the treasurer which, in the written opinion of the attorney general, are required by contract, bequest or law to be segregated from other bank accounts.
- (g) "Special moneys" means moneys which are required to be or are deposited in a custodial bank account or a fee agency account by the state or any agency thereof.
- (h) "State bank account" means state moneys or special moneys deposited in accordance with the provisions of this act.
- (i) "Operating account" means a state bank account which is payable or withdrawable, in whole or in part, on demand.
- (j) "Investment account" means a state bank account which is not payable on demand but shall not include custodial accounts.
- (k) "Market rate" means the average of the average equivalent yields, with equivalent maturities, of: (1) United States government securities; and (2) debt obligations of the following United States government agencies, federal home loan banks, federal national mortgage association and federal farm credit bank.
- (l) "Investment rate" means a rate which is the equivalent yield for United States government securities having a maturity date as published in the Wall Street Journal, nearest the maturity date for equivalent maturities. *For liquidity investments, the 0-90 day rate shall be computed on the average effective federal funds rate as published by the federal reserve system for the previous week.*
- (m) "Custodial account" means a state bank account of custodial moneys.

(n) "Fee agency account" means a state bank account of any state agency consisting of fees, tuition or charges authorized by law prior to remittance to the state treasurer.

(o) "Disbursement" means a payment of any kind whatsoever made from the state treasury or from any operating account, except transfer of state or special moneys between or among operating accounts and investment accounts or either or both of them.

(p) "Securities" means, for the purposes of K.S.A. 75-4218, and amendments thereto, 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 and obligations and securities of United States sponsored enterprises which under federal law may be accepted as security for public funds.

(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, and amendments thereto, within the state of Kansas or bonds issued by a public building commission as authorized by K.S.A. 12-1761, and amendments thereto, if approved by the state bank commissioner, except (A) bonds issued under the provisions of K.S.A. 12-1740 *et seq.*, and amendments thereto, 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) Securities listed in paragraph (13) of subsection (d) of K.S.A. 9-1402 and amendments thereto within limitations of K.S.A. 9-1402 and amendments thereto. Such securities may be accepted or rejected by the treasurer.

(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.

(q) "Savings bank" means a federally chartered savings bank insured by the federal deposit insurance corporation and doing business within the state of Kansas.

(r) "Savings and loan association" means a state or federally chartered savings and loan association insured by the federal deposit insurance corporation and doing business within the state of Kansas.

Sec. 6. K.S.A. 1992 Supp. 75-4209 is hereby amended to read as follows: 75-4209. (a) After the board determines the liquidity needs for the state, and determines the varying maturities of the investment accounts to be offered and the amount of state moneys to be invested in each of the maturities offered, in accordance with rules and regulations adopted pursuant to K.S.A. 1992 Supp. 75-4232, the board shall make available state moneys eligible for investment accounts in the following manner:

(1) (A) The board shall offer to all banks, on a competitive bid basis, state moneys for deposit in investment accounts at maturities of not more than four years and such bids shall be at a rate of at least the market rate, as defined in subsection (k) of K.S.A. 75-4201 and amendments thereto.

(B) As part of the offering under subparagraph (A) the board shall offer to all banks, on a twelve-month average, 50% of the amount of state moneys available for investment or \$350,000,000, whichever amount is greater, at maturities of not more than four years and at the investment rate as defined in subsection (l) of K.S.A. 75-4201 and amendments thereto. Such accounts shall be apportioned by the board among the banks which propose to receive such accounts and which qualify therefor on the basis of the ratio of each bank's combined capital, undivided profits and surplus to the total capital, undivided profits and surplus of all such banks.

(2) The board may invest and reinvest state moneys eligible for investment which are not invested in accordance with paragraph (1), in the following investments:

(A) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations and securities of the United States sponsored enterprises which under federal law may be accepted as security for public funds, except that not more than 10% of the moneys available for investment under this subsection may be invested in mortgage backed securities of such enterprises and of the government national mortgage association; ~~or~~

(B) repurchase agreements ~~of less than 30 days' duration~~ with a Kansas bank or a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency thereof and obligations and securities of United States government sponsored enterprises which under federal law may be accepted as security for public funds; ~~or~~

(C) *investments in state agency and SKILL act projects and bonds pursuant to section 9.*

(b) At any time moneys are available for deposits or investments for a period of time which is insufficient to permit deposit in investment accounts or to provide for the liquidity needs for the state, the board may invest such moneys in repurchase agreements as authorized in subparagraph (B) of paragraph (2) of subsection (a).

(c) When moneys are available for deposits or investments, the board may invest in preferred stock of Kansas venture capital, inc., under terms and conditions prescribed by K.S.A. 74-8203, and amendments thereto, but such investments shall not in the aggregate exceed a total amount of \$10,000,000.

(d) When moneys are available for deposits or investments, the board may invest in loans pursuant to legislative mandates, except that not more than the lesser of 10% or \$80,000,000 of the state moneys shall be invested.

(e) Interest on investment accounts in banks is to be paid at maturity, but not less than annually, except that interest on such investment accounts awarded between August 1, 1992, and June 30, 1993, is to be paid no later than June 30, 1993.

(f) Investments made by the board under the provisions of this section shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

(g) Investments under ~~paragraph (1) and subparagraph (A) of paragraph (2)~~ of subsection (a) shall be for a period not to exceed four years, except for investments in mortgage-backed securities.

(h) Investments in securities under subparagraph (A) of paragraph (2) of subsection (a) shall be limited to securities which do not have any more interest rate risk than do direct United States government obligations of similar maturities except for the 10% limitation on mortgage-backed securities. For purposes of this subsection, "interest rate risk" means market value changes due to changes in current interest rates.

Sec. 7. K.S.A. 1992 Supp. 75-4212a is hereby amended to read as follows: 75-4212a. Whenever the balance in operating accounts is insufficient to meet the state's obligations, and there are state moneys in ~~investment accounts~~ authorized investments, the treasurer, with approval of the board, may:

(a) Borrow upon the security of any one or more investment accounts an amount sufficient to meet the state's obligations. Any such loan shall be repaid in full within 60 days or prior to July 1, whichever occurs first. Interest payment by the state for any loan under this section shall be made only by way of setoff from interest obligations to the state from the bank making such loan. The amount borrowed under this section from any bank, shall never exceed an amount equal to the amount of state moneys on deposit in such bank; or

(b) enter into reverse repurchase agreements utilizing securities purchased by the board pursuant to subsection (a)(2)(A) of K.S.A. 1992 Supp. 75-4209 and amendments thereto. Such reverse repurchase agreements may be entered into with Kansas banks or primary government securities dealers which report to the market reports division of the federal reserve bank of New York. Expenses of reverse repurchase agreements shall be paid by deducting such expenses against other interest income to the state.

Sec. 8. K.S.A. 1992 Supp. 75-4213 is hereby amended to read as follows: 75-4213. Custodial accounts shall be arranged for by the board; ~~but the aggregate of custodial accounts in any bank shall not exceed 10% of the deposits of such bank's statement of last official call.~~ Whenever it appears to the board that certain moneys may be required to be deposited in custodial accounts, the chairperson shall request the opinion of the attorney general, who shall render an opinion thereon within two weeks. ~~No commitment shall be made to maintain all or any portion of any custodial account for a period of more than 12 months.~~ Custodial moneys shall not be considered in determining limitations imposed by this act on

other types of bank accounts. Custodial accounts may be demand deposits or interest bearing deposits, as determined by the board, and if the custodial accounts are interest bearing the rate thereof shall be the investment rate, as defined in subsection (1) of K.S.A. 75-4201, and amendments thereto. The board may invest custodial moneys in repurchase agreements ~~of less than 30 days' duration~~ with a Kansas bank or with a primary government securities dealer which reports to the market reports division of the federal reserve bank of New York for direct obligations of, or obligations that are insured as to principal and interest by, the United States government or any agency or enterprise thereof.

New Sec. 9. (a) Before the Kansas development finance authority issues any bonds for any state agency project or a project under the SKILL act, the authority shall conduct a feasibility analysis and recommend to the secretary of administration any project which appears appropriate for consideration to offer to the pooled money investment board as an alternative investment. If the secretary of administration approves the recommendation, the secretary shall give notice of such approval to the chairperson of the pooled money investment board in writing. If the pooled money investment board and the secretary of administration reach agreement on the terms and conditions of the financing, the pooled money investment board may invest in any such project.

(b) Unless the pooled money investment board has declined the investment, the Kansas development finance authority shall not proceed to issue bonds for any project offered to the pooled money investment board until at least 15 days after the secretary of administration's notice to the pooled money investment board under subsection (a).

(c) The authority shall give notice to the pooled money investment board of the public sale of bonds for any state agency or SKILL act projects. The pooled money investment board is authorized to purchase any such bonds.

New Sec. 10. Moneys of a state agency or public instrumentality of this state which may be invested by the pooled money investment board expressly for such agency or instrumentality, or invested directly by the agency or instrumentality, may be invested in the municipal investment pool fund established in K.S.A. 1992 Supp. 12-1677a and amendments thereto. Such agency or instrumentality shall be treated as a municipality for purposes of participation in such fund.

Sec. 11. K.S.A. 65-3415a is hereby amended to read as follows: 65-3415a. (a) There is hereby created in the state treasury the solid waste management fund.

(b) The secretary shall remit at least monthly to the state treasurer all moneys collected or received by the secretary from the following sources:

(1) Solid waste tonnage fees imposed pursuant to K.S.A. 65-3415b, *and amendments thereto*;

(2) application and annual fees provided for by K.S.A. 65-3407, and amendments thereto;

(3) gifts, grants, reimbursements or appropriations intended to be used for the purposes of the fund, but excluding federal grants and cooperative agreements; and

(4) any other moneys provided by law.

Upon receipt thereof, the state treasurer shall deposit in the state treasury any amount remitted pursuant to this subsection and shall credit the entire amount to the solid waste management fund.

(c) Moneys in the solid waste management fund shall be expended for the following purposes:

(1) Grants to counties or groups of counties or designated city or cities pursuant to K.S.A. 65-3415, and amendments thereto;

(2) monitoring and investigating solid waste management plans of counties and groups of counties;

(3) payment of extraordinary costs related to monitoring permitted solid waste processing facilities and disposal areas, both during operation and after closure;

(4) payment of costs of postclosure cleanup of permitted solid waste disposal areas which, as a result of a postclosure occurrence, pose a substantial hazard to public health or safety or to the environment;

(5) emergency payment for costs of cleanup of solid waste disposal areas which were closed before the effective date of this act and which pose a substantial risk to the public health or safety or to the environment, but the total amount of such emergency payments during a fiscal year shall not exceed an amount equal to 50% of all amounts credited to the fund during the preceding fiscal year;

(6) to permit the secretary to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release from a solid waste processing facility or a solid waste disposal area;

(7) to permit the secretary to take corrective action where the release presents actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action;

(8) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 65-3401 through 65-3423, and amendments thereto, including the cost of any additional employees or increased general operating costs of the department attributable therefor; and

(9) development of educational materials and programs for informing the public about solid waste issues.

(d) If the secretary determines that expenditures from the solid waste management fund are necessary, the person or persons responsible for the operation or long-term care of a disposal area whose failure to comply with this act, rules and regulations promulgated thereunder, or permit conditions resulted in such determination, shall be responsible for the repayment of those amounts expended. The secretary shall take appropriate action to enforce this provision against any responsible person. The secretary shall remit to the state treasurer any amounts recovered and collected in such action. The state treasurer shall deposit all such amounts in the state treasury and credit the same to the solid waste management fund.

(e) Expenditures from the solid waste management fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person designated by the secretary.

(f) On or before the 10th day of the month following the month in which moneys are first credited to the solid waste management fund, and monthly thereafter on or before the 10th day of the month, the director of accounts and reports shall transfer from the state general fund to the solid waste management fund the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of the month following the month in which moneys are first credited to the solid waste management fund, and monthly thereafter prior to the 10th day of the month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding month, pursuant to K.S.A. 75-4210a, and amendments thereto, that is attributable to moneys in the solid waste management fund. Such amount of money shall be determined by the pooled money investment board based on: (1) The average daily balance of moneys in the solid waste management fund during the preceding month as certified to the board by the director of accounts and reports; and (2) the average interest rate on ~~time deposit, open accounts for that period as determined under K.S.A. 75-4212, and amendments thereto~~ repurchase agreements of less than 30 days' duration entered into by the pooled money investment board

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for that period of time. On or before the fifth day of the month following the month in which moneys are first credited to the solid waste management fund, and monthly thereafter on or before the fifth day of the month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the solid waste management fund during the preceding month.

(g) The solid waste management fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

Sec. 12. K.S.A. 74-5086a is hereby amended to read as follows: 74-5086a. (a) There is hereby established in the state treasury the state housing trust fund. All moneys credited to the state housing trust fund shall be used for the purposes of housing programs and services including, but not limited to, the provision of financial programs for the repair, rehabilitation and improvement of existing residential housing, accessibility modifications, rental subsidies and the provision of housing services and assistance to persons having low or moderate income and disabled persons.

(b) The state housing trust fund shall be administered by the office of housing of the department of commerce. All expenditures from the state housing trust fund shall be in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of commerce or the secretary's designee.

(c) The office of housing and the department of commerce are hereby authorized to apply for and receive available public or private grants, gifts and donations for the purposes of housing programs and services. All such grants, gifts and donations, which are not required to be deposited in a separate special revenue fund, shall be deposited in the state treasury to the credit of the state housing trust fund. All moneys received by the department of commerce and housing for fees related to housing, which are not required to be deposited in a separate special revenue fund, shall be deposited in the state treasury to the credit of the state housing trust fund.

(d) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the state housing trust fund the amount of money certified by the pooled money investment board in accordance with this paragraph. Prior to the 10th day of each month, the pooled money investment board shall certify to the director of accounts and reports the amount

of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding month, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to moneys in the state housing trust fund. Such amount of money shall be determined by the pooled money investment board based on: (A) The average daily balance of moneys in the state housing trust fund during the preceding month as certified to the board by the director of accounts and reports and (B) the average interest rate on ~~time deposit, open accounts for that period as determined under K.S.A. 75-4212 and amendments thereto~~ repurchase agreements of less than 30 days' duration entered into by the pooled money investment board for that period of time. On or before the fifth day of each month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the state housing trust fund during the preceding month.

Sec. 13. K.S.A. 9-1405, 65-3415a and 74-5086a and K.S.A. 1992 Supp. 12-1675, 12-1677a, 12-1677b, 75-4201, 75-4209, 75-4212a and 75-4213 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 16, 1993.

Published in the *Kansas Register* April 22, 1993.

CHAPTER 208

Senate Bill No. 211

AN ACT concerning criminal procedure; relating to criminal history record information; fees prohibited for certain information requests; amending K.S.A. 22-4704 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 22-4704 is hereby amended to read as follows: 22-4704. (a) In accordance with the provisions of K.S.A. 77-415 *et seq.*, and amendments thereto, the director shall adopt appropriate rules and regulations for agencies in the executive branch of government and for criminal justice agencies other than those that are part of the judicial branch of government to implement the provisions of this act.

(b) The director shall develop procedures to permit and encourage the transfer of criminal history record information among and between courts and affected agencies in the executive branch and especially between courts and the central repository.

1 (B) As part of the offering under subparagraph (A) the board shall
 2 offer to qualified banks, on a twelve-month average, 50% of the amount
 3 of state moneys available for investment or \$350,000,000, whichever
 4 amount is greater, at maturities of not more than four years and at the
 5 investment rate as defined in subsection (l) of K.S.A. 75-4201, and
 6 amendments thereto. Such accounts shall be apportioned by the board
 7 among the banks which propose to receive such accounts and which qual-
 8 ify therefor on the basis of the ratio of each bank's combined capital,
 9 undivided profits and surplus to the total capital, undivided profits and
 10 surplus of all such banks.

11 (C) Qualified banks shall be determined in accordance with requi-
 12 rements established by rules and regulations adopted pursuant to K.S.A.
 13 1994 Supp. 75-4232, and amendments thereto.

14 (2) The board may invest and reinvest state moneys eligible for in-
 15 vestment which are not invested in accordance with paragraph (1), in the
 16 following investments:

17 (A) Direct obligations of, or obligations that are insured as to prin-
 18 cipal and interest by, the United States of America or any agency thereof
 19 and obligations and securities of the United States sponsored enterprises
 20 which under federal law may be accepted as security for public funds,
 21 except that not more than 10% of the moneys available for investment
 22 under this subsection may be invested in mortgage backed securities of
 23 such enterprises and of the government national mortgage association;

24 (B) repurchase agreements with a Kansas bank or a primary govern-
 25 ment securities dealer which reports to the market reports division of the
 26 federal reserve bank of New York for direct obligations of, or obligations
 27 that are insured as to principal and interest by, the United States govern-
 28 ment or any agency thereof and obligations and securities of United States
 29 government sponsored enterprises which under federal law may be ac-
 30 cepted as security for public funds; ~~or~~

31 (C) investments in SKILL act projects and bonds pursuant to K.S.A.
 32 1994 Supp. 74-8920, and amendments thereto, and investments in any
 33 state agency bonds or bond project ~~7~~

34 (b) At any time moneys are available for deposits or investments for
 35 a period of time which is insufficient to permit deposit in investment
 36 accounts or to provide for the liquidity needs for the state, the board may
 37 invest such moneys in repurchase agreements as authorized in subpara-
 38 graph (B) of paragraph (2) of subsection (a).

39 (c) When moneys are available for deposits or investments, the board
 40 may invest in preferred stock of Kansas venture capital, inc., under terms
 41 and conditions prescribed by K.S.A. 74-8203, and amendments thereto,
 42 but such investments shall not in the aggregate exceed a total amount of
 43 \$10,000,000.

~~;~~ or
 (D) until July 1, 1996, in the municipal investment pool fund, created under K.S.A. 1994 Supp. 12-1677a, and amendments thereto, in accordance with the policies adopted by the board on January 30, 1995. Any investment of such state moneys in such fund prior to the effective date of this act are hereby authorized, confirmed and validated. On July 1, 1996, all state moneys invested in the municipal investment pool fund under this paragraph shall be removed from such fund.

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1 agency thereof and obligations and securities of United States govern-
2 ment sponsored enterprises which under federal law may be accepted as
3 security for public funds.

4 (c) All interest earnings received from investments of money in the
5 municipal investment pool fund shall be credited to the municipal in-
6 vestment pool fund. Interest earnings experienced by the fund on in-
7 vestments attributable to each participating municipality shall be prorated
8 and applied to the individual accounts of the municipalities, maintained
9 by the state treasurer. Deferred earnings transferred from the municipal
10 investment pool reserve fund to the municipal investment pool fund shall
11 be prorated and applied to the individual accounts of the municipalities,
12 maintained by the state treasurer. A statement for each municipality par-
13 ticipating unit account showing deposits, withdrawals, earnings and losses
14 distributions shall be provided ~~periodically~~ *monthly* to the municipality.
15 The state treasurer shall make comprehensive reports *monthly* to those
16 municipalities participating in the municipal investment pool fund; ~~in-~~
17 ~~cluding~~ *and to other interested parties requesting such reports. Such re-*
18 *ports shall include a summary of transactions for the period month as well*
19 *as, the current market value of the pool investments, the weighted av-*
20 *erage maturity ratio of the fund and such other relevant information the*
21 *state treasurer may wish to include in such report.*

, the original costs of the investments in
the fund, including any fees
associated with such investments

22 (d) The state treasurer may assess reasonable charges not to exceed
23 1% of the interest earned against the fund for reimbursement of expenses
24 incurred in administering the fund. The state treasurer shall certify, pe-
25 riodically, the amount of the assessment and the director of accounts and
26 reports shall transfer the amount certified from the municipal investment
27 pool fund to the municipal investment pool fund fee fund, which is hereby
28 created. All expenditures from the municipal investment pool fund fee
29 fund shall be made in accordance with appropriation acts upon warrants
30 of the director of accounts and reports issued pursuant to vouchers ap-
31 proved by the state treasurer or a person or persons designated by the
32 state treasurer. Amounts of gains realized on disposition of investments
33 of the municipal investment pool fund shall be periodically certified by
34 the state treasurer, and the director of accounts and reports shall transfer
35 the amount certified from the municipal investment pool fund to the
36 municipal investment pool reserve fund which is hereby created in the
37 state treasury. The state treasurer shall make a determination of the
38 amount needed for a reserve for possible losses to the municipal invest-
39 ment pool fund and shall certify periodically such amount, and the direc-
40 tor of accounts and reports shall transfer the amount so certified from
41 the municipal investment pool fund fee fund to the municipal investment
42 pool reserve fund. If the state treasurer makes a determination that sig-
43 nificant losses or gains have occurred to the municipal investment pool

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1 changes due to changes in current interest rates.

2 (k) On and after July 1, 1996, the weighted average maturity of all
3 investments in the municipal investment pool fund shall not exceed the
4 weighted average maturity of all deposits in the municipal investment pool
5 fund by more than 100%.

6 (l) The pooled money investment board shall not: (A) Invest moneys
7 in the municipal investment pool fund in derivatives, except in direct
8 obligations of the United States of America; (B) enter into reverse repur-
9 chase agreements, except for the purposes authorized under subsection
10 (b) of K.S.A. 1994 Supp. 12-1677c, and amendments thereto.

11 (m) On and after January 1, 1996, investments made under para-
12 graph (2) of subsection (a) of K.S.A. 75-4209, and amendments thereto,
13 shall not be exchanged with investments of the municipal investment pool
14 fund without prior approval of the pooled money investment board and
15 the prior approval of the state finance council acting on this matter which
16 is hereby characterized as a matter of legislative delegation and subject
17 to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and
18 amendments thereto.

19 (n) The pooled money investment board may adopt such rules and
20 regulations for the management of such moneys and investments in the
21 municipal investment pool fund as the board deems necessary.

22 (o) For the purpose of this section:

23 (1) "Municipality" means those entities specified in subsection (a) of
24 K.S.A. 12-1675, and amendments thereto;

25 (2) "derivatives" means a financial contract whose value depends on
26 the value of an underlying asset or index of asset values; and

27 (3) "weighted average maturity" means the sum of the total number
28 of days to maturity for each individual security multiplied by the par
29 value of each individual security divided by the sum of the par values of
30 all securities

31 Sec. 2. K.S.A. 1994 Supp. 75-4209 is hereby amended to read as
32 follows: 75-4209. (a) After the board determines the liquidity needs for
33 the state, and determines the varying maturities of the investment ac-
34 counts to be offered and the amount of state moneys to be invested in
35 each of the maturities offered, in accordance with rules and regulations
36 adopted pursuant to K.S.A. 1994 Supp. 75-4232, and amendments
37 thereto, the board shall make available state moneys eligible for invest-
38 ment accounts in the following manner:

39 (1) (A) The board shall offer to qualified banks, on a competitive bid
40 basis, state moneys for deposit in investment accounts at maturities of not
41 more than four years and such bids shall be at a rate of at least the market
42 rate, as defined in subsection (k) of K.S.A. 75-4201, and amendments
43 thereto.

Without prior approval of the pooled money investment board and the prior approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto,

10%; except that in no case shall the length of investment of any security exceed the length of deposit by more than 90 days. For the purpose of determining the weighted average maturity under this subsection, all deposits in the municipal investment pool fund without a stated maturity shall be assumed to have a maturity of one day

All such exchanges shall be made in accordance with generally accepted accounting principles.

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