

Memo 1995-3 Investment in Temporary Notes

TO: Memo Book
FROM: Sonya Allen, Staff Attorney
DATE: January 27, 1995

RE: K.S.A. 9-1101 (3); general obligation bonds; temporary notes.

ISSUE: Does the investment authority provided by K.S.A. 9-1101 (3) include the authority to invest in temporary notes?

ANSWER: Yes.

DISCUSSION:

K.S.A. 1993 Supp. 9-1101 (3) gives banks the power to buy and sell "general obligation bonds of the state of Kansas or any municipality or quasi-municipality thereof, and of other states, and of municipalities or quasi-municipalities in other states". In order to determine whether "general obligation bond", as used in 9-1101 (3) was intended to include temporary notes, it is necessary to define what a temporary note is.

Temporary notes are short term notes issued in anticipation of the issuance of general obligation bonds by the municipality. See AG Opinion 82-122. According to K.S.A. 10-123, temporary notes are "executed and registered in the same manner" as bonds, and constitute general obligations of the municipality issuing them. In addition, bonds and temporary notes are subject to the same standards regarding the municipality's ability to invest their idle proceeds and regarding disposition of interest pursuant to K.S.A. 10-131. Furthermore, the General Bond Law, which is applicable to all issuances of municipal bonds, has been determined by case law to apply to temporary notes. Mallon v. City of Emporia, states that "temporary notes are encompassed within the meaning of bonds", 11 Kan. App. 2d 494 at 498, 726 P.2d 1354 (1986), citing First State Bank v. Bone, 122 Kan. 493, 252 Pac. 250 (1927).

In light of the above facts, it is the department's position that the language of 9-1101 (3) concerning a bank's power to invest in general obligation bonds of a municipality includes the power to invest in temporary notes. Accordingly, applying the language of subsection (3), a bank may invest in temporary notes issued by a municipality or quasi-municipality in the state of Kansas without limitation. If the bank chooses to invest in temporary notes of a municipality or quasi-municipality of another state, there likewise would be no limitation unless either or both of the situations described in (a) and (b) were present. If (a) the direct and overlapping indebtedness of such municipality or quasi-municipality was in excess of 10% of its valuation, excluding therefrom all valuations on intangibles and homestead exemption valuation, or (b) if the temporary note of such municipality or quasi-municipality has been in default in the payment of principal or interest within the 10 years prior to the time the bank acquires the temporary note, then there would be an investment limitation of 15% of the bank's paid in and unimpaired capital and its unimpaired surplus fund. For examination report purposes, temporary notes will be included in the securities category.