

SCHOOLS: School district may not invest funds  
SCHOOL DISTRICTS:  
BANKS AND BANKING: in savings deposits.

March 2, 1959



Honorable LeRoy Snodgrass  
Prosecuting Attorney  
Miller County  
Tuscumbia, Missouri

Dear Sir:

This is in response to your opinion request dated September 25, 1958, which reads as follows:

"Several school districts in Miller County, Missouri, have inquired as to whether or not such districts may legally and lawfully deposit surplus funds in savings account, drawing interest thereupon from banks incorporated under the laws of Missouri.

"I understand that federal banking regulations make provisions that a bank may, if it desires, require 30 days notice before withdrawals.

"I further understand that federal banking regulations prohibit banks from paying interest on saving accounts to State, County, Cities, etc., but that banks may and are permitted to pay interest to school districts on savings accounts.

"The specific question that I would like to have an opinion upon is 'Whether or not a school district may legally and lawfully deposit surplus funds with banks on saving accounts to draw interest.'"

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You are correct in your statement that under federal banking regulations banks may pay interest to school districts on savings accounts. In a ruling of the Board of Governors of the Federal Reserve System, found in the November, 1937, issue of the Federal Reserve Bulletin, it was held that a school district is an "organization operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and not operated for profit" and, therefore, that deposits of school districts may be classified by Federal Reserve member banks as savings deposits, upon which interest may be paid.

This is only partially determinative of the problem, however. As far as the bank is concerned, it may accept savings deposits for school districts, but there is the further question as to the authority of the school district to invest its funds in savings deposits. It has frequently been stated that a school district is a subordinate agency, subdivision or instrumentality of the state, performing the constitutionally imposed duty of the state in the conduct and maintenance of the public schools. It is a creature of the Legislature, the government and control of which is vested in a board of education. Its board is what the statute makes it, having only such powers as are delegated to it or such as may be derived therefrom (School Dist. No. 6 of Jackson County v. Shawhan et al., No. App., 273 SW 182, 184; Wright v. Board of Education of St. Louis, 295 Mo. 466, 476, 246 SW 43; 56 C.J., Schools and School Districts, page 193, Section 46, page 294, Section 152, page 331, Section 202). Consequently, in the investment of funds the board must look to some statute for its authority to do so.

Authority is expressly given boards of directors of school districts to invest surpluses accumulating in the sinking and interest funds in bonds of the United States or bonds of the State of Missouri (Section 165.063, RSMo, Cum. Supp. 1957; Section 108.200, RSMo 1949). By virtue of Section 7 of Article IX, Constitution of Missouri, 1945, and Sections 171.010 - 171.110, RSMo 1949, the county court is given authority to invest the county school fund and the township school fund in government bonds. Also, by reference to the last-mentioned sections, surpluses existing in the county treasury credited to a common school district may, upon application of the directors, be invested by the county court in government bonds, i.e., "in the same manner as township school funds are invested." (Sections 165.243 and 165.247, RSMo 1949.)

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Prior to 1957 these were the only provisions for the investment of school funds.

In 1957, the General Assembly, by House Bill No. 51, amended Section 165.110, RSMo, Cum. Supp. 1957, so that subsection 7 thereof reads as follows:

"Should the board have money in the teachers', incidental, building, sinking or interest funds which will not be needed for a period of at least six months for the purpose for which the money was received, the board may, if it deems it advisable, invest the funds in either open time deposits for ninety days or certificates of deposit in a depository selected by the board, provided the depository has deposited securities under the provisions of sections 110.010 and 110.020, RSMo, or bonds of the state of Missouri, of the United States, or of any wholly owned corporation of the United States provided the bonds are redeemable at maturity at par, or in other short term obligations of the United States. No open time deposits shall be made or bonds purchased to mature beyond the date that the funds are needed for the purpose for which they were received by the school district. Interest accruing from the investment of the surplus funds in such deposits or bonds shall be credited to the fund from which the money was invested."

You will note that this section authorizes investment of surplus funds in "open time deposits for ninety days or certificates of deposit in a depository selected by the board," but says nothing about savings deposits.

In banking parlance, "savings deposit" is not synonymous with either "open time deposit" or "certificate of deposit." Virtually every bank in the state is governed by the regulations of either the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation with respect to the payment of deposits and interest thereon. Congress has given authority to the Board of Governors of the Federal Reserve System to define the terms "demand deposits," "gross demand deposits," "deposits payable on demand,"

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"time deposits," "savings deposits" and "trust funds" by the provisions of Title 12, Section 461, U.S.C.A. Comparable authority was given to the Board of Directors of the Federal Deposit Insurance Corporation in Title 12, Section 1828(g), U.S.C.A., to define "demand deposits," "time deposits" and "savings deposits."

Pursuant to that authority, both the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation have defined the terms "demand deposit," "time deposit" and "savings deposit." For the Federal Reserve System, the definitions are found in the Code of Federal Regulations, Title 12, Section 217.1. For the Federal Deposit Insurance Corporation, they are found in the Code of Federal Regulations, Title 12, Section 329.1. While not identical, the definitions of the two agencies are substantially the same, and those of the Federal Reserve System read as follows:

"(a) Demand deposits. The term 'any deposit which is payable on demand', hereinafter referred to as a 'demand deposit', includes every deposit which is not a 'time deposit' or 'savings deposit', as defined in this section.

"(b) Time deposits. The term 'time deposits' means 'time certificates of deposit' and 'time deposits, open account', as defined in this section.

"(c) Time certificates of deposit. The term 'time certificate of deposit' means a deposit evidenced by a negotiable or nonnegotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

(1) On a certain date, specified in the instrument, not less than 30 days after the date of the deposit, or

(2) At the expiration of a certain specified time not less than 30 days after the date of the instrument, or

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(3) Upon notice in writing which is actually required to be given not less than 30 days before the date of repayment, and

(4) In all cases only upon presentation and surrender of the instrument.

"(d) Time deposits, open account. The term 'time deposit, open account' means a deposit, other than a 'time certificate of deposit' or a 'savings deposit', with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than 30 days after the date of the deposit, or prior to the expiration of the period of notice which must be given by the depositor in writing not less than 30 days in advance of withdrawal.

"(e) Savings deposits. The term 'savings deposit' means a deposit, evidenced by a pass book, consisting of funds deposited to the credit of one or more individuals, or of a corporation, association or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and not operated for profit; or in which the entire beneficial interest is held by one or more individuals or by such a corporation, association or other organization, and in respect to which deposit:

(1) The depositor is required, or may at any time be required, by the bank to give notice in writing of an intended withdrawal not less than 30 days before such withdrawal is made;

(2) Withdrawals are permitted in only two ways, either (i) upon presentation of the pass book, through payment to the person presenting the pass-book, or (ii) without presentation of the pass book, through payment to the depositor himself but not to any

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other person whether or not acting for the depositor.

"The presentation by any officer, agent or employee of the bank of a pass book or a duplicate thereof retained by the bank or by any of its officers, agents or employees is not a presentation of the pass book within the meaning of this part except where the pass book is held by the bank as a part of an estate of which the bank is a trustee or other fiduciary, or where the pass book is held by the bank as security for a loan. If a pass book is retained by the bank, it may not be delivered to any person other than the depositor for the purpose of enabling such person to present the pass book in order to make a withdrawal, although the bank may deliver the pass book to a duly authorized agent of the depositor for transmittal to the depositor.

"Every withdrawal made upon presentation of a pass book shall be entered in the pass book at the time of the withdrawal, and every other withdrawal shall be entered in the pass book as soon as practicable after the withdrawal is made.

"The term 'savings deposit' also means a deposit evidenced by a written receipt or agreement although not by a pass book, consisting of funds of the kind described above in this paragraph and in respect to which deposit the depositor is required, or may at any time be required, by the bank to give notice in writing of an intended withdrawal not less than thirty days before such withdrawal is made, and withdrawals are permitted only through payment to the depositor himself but not to any other person whether or not acting for the depositor."

The Legislature, in Section 165.110, supra, is presumed to have used the words "open time deposits" and "certificates of deposit" as those terms are generally understood in the banking

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world (Section 1.090, RSMo 1949). Since savings deposits differ in some respects from both open time deposits and certificates of deposit and no authority has been granted to school districts to invest their funds in savings deposits, they may not do so.

CONCLUSION

It is the opinion of this office that school districts are not authorized to invest any of their funds in savings deposits.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON  
Attorney General

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