STATE TREASURER: The State Treasurer is authorized to invest through repurchase agreements in United States obligations payable within one year those moneys not needed for current operating expenses and that are available for less than thirty days. The obligations must be kept by the State Treasurer in the manner provided in Section 30.270(2), V.A.M.S.

See Sec 30.260.2 + 4 RSMo Supp 1984

OPINION NO. 19

April 5, 1976

FILED 19

Honorable James I. Spainhower
State Treasurer of Missouri
Room 229, Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Spainhower:

This opinion is issued in response to your question which reads as follows:

> "Can the State Treasurer, according to present constitutional and statutory provisions, invest state moneys in United States Government Obligations under a repurchase agreement?"

Article IV, Section 15 of the Missouri Constitution, defines the duties of the State Treasurer, which include the following:

> ". . . The state treasurer shall determine by the exercise of his best judgment the amount of state moneys that are not needed for current operating expenses of the state government and shall place all such moneys not needed for payment of the current operating expenses of the state government on time deposit, bearing interest, in banking institutions in this state selected by the state treasurer and approved by the governor and state auditor or in short term United States government obligations maturing and becoming payable one year or less from the date of issue or in other United States obligations maturing and becoming payable

> not more than one year from the date of purchase. The investment and deposit of such funds shall be subject to such restrictions and requirements as may be prescribed by law. . . ."

Pursuant to the authority granted in Article IV, Section 15 of the Missouri Constitution, the General Assembly has enacted two provisions relating to the investment of state moneys in United States obligations. Section 30.260(2), V.A.M.S., provides as follows:

> "The state treasurer shall place the state moneys which he has determined are not needed for current operations of the state government on time deposit drawing interest in banking institutions in this state selected by him and approved by the governor and the state auditor, or place them in short term United States government obligations maturing and becoming payable one year or less from the date of issue, or in other United States obligations maturing and becoming payable not more than one year from the date of purchase, as he in the exercise of his best judgment determines to be in the best overall interest of the people of the state of Missouri, giving due consideration to (1) the preservation of such state moneys, (2) the comparative yield to be derived therefrom, (3) the effect upon the economy and welfare of the people of Missouri of the removal or withholding from banking institutions in the state of all or some such state moneys and investing same in obligations of the United States government, and (4) all other factors which to him as a prudent state treasurer seem to be relevant to the general public welfare in the light of the circumstances at the time prevailing."

Section 30.260(4), V.A.M.S., provides as follows:

> "The state treasurer may subscribe for or purchase obligations of the United States government of the character described in subsection 2 of this section which he, in the exercise of his best judgment, believes to be the best for investment of state moneys

> at the time and which are available to him at a price not in excess of par plus interest accrued to the date of purchase, and in payment therefor may withdraw moneys from any bank account, demand or time, maintained by him without having any supporting warrant of the comptroller. The state treasurer may bid on subscriptions for such obligations in accordance with his best judgment. The state treasurer shall provide for the safekeeping of all such obligations so acquired in the same manner that securities pledged to secure the repayment of state moneys deposited in banking institutions are kept by him pursuant to law. The state treasurer may hold any such obligation so acquired by him until its maturity or prior thereto may sell the same as he, in the exercise of his best judgment, deems necessary or advisable for the best interest of the people of the state of Missouri in the light of the circumstances at the time prevailing. The state treasurer may pay all costs and expenses reasonably incurred by him in connection with the subscription, purchase, sale, collection, safekeeping or delivery of all such obligations at any time acquired by him."

The Missouri Constitution and statutes expressly authorize the State Treasurer to invest state moneys that are not needed for current operating expenses in United States obligations. To determine whether the State Treasurer may make such investments under a "repurchase agreement" requires discussion of the nature of such an arrangement.

According to the materials you have provided this office, a repurchase agreement involves the sale of securities with the agreement that after a stated period of time the original seller will buy back the same securities at a pre-determined price or yield. The interest rate on repurchase agreements is a matter of negotiation between the seller of the securities and the investor. The advantage to be derived by the investor through use of repurchase agreements is the ability to invest funds that are available for only a short period of time with an assured return on the investment and the avoidance of a capital loss. As you have noted in your opinion request:

> "Banks are prohibited by Federal regulations from paying interest on deposits of less than 30 days, thus eliminating bank deposits as a source of short-term investments. In addition, United States Government Obligations of the one-two week maturity range are almost impossible to acquire, although occasionally the securities can be purchased at a reduced yield to the investor.
>
> "The purchase of longer-term Government Obligations and subsequent immediate resale can often result in a reduction in yield and possibly a loss of principle [sic] if interest rates increase dramatically. Hence, the Treasurer feels that the authority to engage in repurchase agreements involving United States Government Obligations would offer a new dimension as well as give added flexibility to the investment of short-term state moneys. This instrument would allow the Treasurer to invest prudently for short periods of time without the risk of losing interest or principal due to market fluctuations."

Based on the foregoing, we shall assume for the purpose of this opinion that you are asking about the legality of investing in repurchase agreements only those moneys not needed for current operating expenses <u>that are available for less than thirty days</u>.

Sections 30.260(2) and 30.260(4), V.A.M.S., authorize the State Treasurer to purchase "short term United States government obligations maturing and becoming payable one year or less from the date of issue, or in other United States obligations maturing and becoming payable not more than one year from the date of purchase." Section 30.260(4), V.A.M.S., also permits the State Treasurer to hold such obligations until they mature or to sell them prior to maturity in the exercise of his best judgment. Although neither section expressly provides for investment in United States obligations by means of repurchase agreements, we find no basis for distinguishing a purchase and sale effected by means of a repurchase agreement from the more conventional transaction, provided the obligations are payable within one year.

The overriding emphasis of Section 30.260, V.A.M.S., is to confer upon the State Treasurer broad discretion to invest state moneys not needed for current operations profitably but prudently in time deposits or United States obligations. (See Opinion No. 64 (Morris), May 2, 1957, a copy of which is enclosed.) In exercising his judgment, the State Treasurer is required to consider the preservation of state moneys, the comparative yield to be derived, the effect upon the economy and welfare of the people of Missouri of removing or withholding state moneys from Missouri banking institutions, and all other factors relevant to the public welfare in the light of the circumstances prevailing at the time. Section 30.260(2), V.A.M.S.

Investment in United States obligations carries no greater risk of loss when the investment is effectuated by means of a repurchase agreement. To the contrary, under a repurchase agreement the risk of loss is less than it would be if the purchase and sale were made in the conventional manner, for the rate of return to the investor is negotiated and fixed in advance of the transaction and is not affected by market fluctuations. Furthermore, investment in United States obligations through repurchase agreements could provide a greater yield on state moneys than would otherwise be possible when funds not needed for current operating expenses are available for less than thirty days.

Finally, the effect upon the economy and welfare of the people of Missouri occasioned by removing or withholding state moneys from banks located within the state would be no different whether United States obligations are purchased in the conventional manner or by means of a repurchase agreement. In either case the alternatives are interest-bearing time deposits versus United States obligations, and the State Treasurer must allocate between these investments in the exercise of his best judgment on the basis of prevailing circumstances.

When the State Treasurer invests in United States obligations, Section 30.260(4), V.A.M.S., requires that he "provide for the safekeeping of all such obligations so acquired in the same manner that securities pledged to secure the repayment of state moneys deposited in banking institutions are kept by him pursuant to law." According to the information you have furnished this office, the actual bill, note or certificate of indebtedness is seldom delivered to the investor under a repurchase agreement. His purchase from and resale to the dealer is evidenced instead by debits and credits in the dealer's books or those of the Federal Reserve Bank.

In Opinion Letter No. 258 (Robinson), issued October 2, 1972, a copy of which is enclosed, we concluded that "book-entry treasury securities" were simply another method of evidencing a United States government obligation and that subsections 2 and 4 of Section 30.260, V.A.M.S., do not require the Treasurer to seek the actual document reflecting the obligation of the United States. It is the opinion of this office that the same conclusion obtains with respect to investment in United States obligations pursuant to repurchase agreements with the same qualification, namely, that the obligations be kept by the State Treasurer in the same manner that collateral pledged by state depositaries are kept pursuant to Section 30.270(2), V.A.M.S., e.g., either the government obligations may be held by a bank other than the dealer-bank chosen in the manner provided in Section 30.270(2), V.A.M.S., or the purchase may be reflected by a credit to the account of the State Treasurer in the books of the Federal Reserve Bank which holds the securities in which the dealer deals.

CONCLUSION

By reason of the foregoing, it is the opinion of this office that the State Treasurer is authorized to invest through repurchase agreements in United States obligations payable within one year those moneys not needed for current operating expenses and that are available for less than thirty days. The obligations must be kept by the State Treasurer in the manner provided in Section 30.270(2), V.A.M.S.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Karen M. Iverson.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 64
5-2-57, Morris

Op. Ltr. No. 258
10-2-72, Robinson