

KMAG/KMAAG

Question: We have several audit clients who are municipalities. We currently have a few municipalities who do not adopt a GAAP waiver. We audit them in accordance with KMAG as required and site KMAG in our report. Many of these clients also adopt most GASB statements. In reading the guidance and requirements presented in KMAG we have noted in the past that *Government Auditing Standards* are not required.

My question is this, should we be auditing in accordance with *Government Auditing Standards* taking into consideration the fact that they present on a GAAP basis and many adopt GASB statements? Or, are we okay to not apply the standards? We have debated this many times over the past few years and have even discussed with our peer reviewer but no clear cut conclusion has been made.

Thank you so much for your help with this!

Answer: Good afternoon. You are correct in that the KMAG does not require that municipal audits be conducted in accordance with *Government Auditing Standards* (the Yellow Book). Audits in accordance with *Government Auditing Standards* are encouraged, however, and are acceptable so long as the other KMAG requirements are met. See Page 3 of the 2011 KMAG.

This is the KMAG guidance, but we do feel *Government Audit Standards* (the Yellow Book) must be used if the local unit of government is receiving federal funds and is subject to an A-133 Audit (Single Audit Act). Under these circumstances the guidance provided by the KMAG would not supersede federal requirements. If the requirements of this trigger are not met, then *Government Audit Standards* do not have to be used, but would be encouraged.

To address your specific question, the fact that the financial statements are presented on a GAAP basis, and may adopt GASB statements, does not appear to be the catalyst in determining the use of the *Government Auditing Standard*.

Hope this information helps. If you have additional questions or comments, please do not hesitate to ask. Thank you.

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Question: I am preparing a quote for a KMAG audit.

I have the guide, and I feel relatively familiar with the guide. It has been our firm's opinion that KMAG engagements are subject to the yellow book. Is this the state's view as well?

Answer: Good afternoon. As a general rule, KMAAG does not require that municipal audits be conducted in accordance with Government Auditing Standards (the Yellow Book). However, the revised/proposed KMAAG guidance would require GAS (the Yellow Book) to be used if the local unit of government is expending federal funds in an amount that would subject the entity to an A-133 Audit (Single Audit Act), or when a Federal or State agency mandates a GAS audit in a contractual arrangement with the municipality being audited. Under these circumstances the general guidance provided by the KMAAG would not supersede the federal or contractual requirements. If the triggers are not met by the municipality, then the Government Audit Standards, while not required, would be encouraged and acceptable so long as the other KMAAG requirements are met.

Hope this information helps. If you have additional questions or comments, please do not hesitate to ask.

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Question: Can you help me with a question that I have received conflicting answers on? At our library we have required two signatures on all checks. Recently one of our board members suggested we go to one signature. Our auditor says this is permissible. K.S.A. 10-803 makes me wonder if that is correct. Our board member holds a law degree and believes this law only applies to cities. The auditor does not believe this statute applies to libraries and that 2 signatures are not required. In addition they use KMAAG and no statute is mentioned to ensure compliance. Would that be correct? The City requires two signatures. We are not a city department, but I wonder how libraries with taxing authority should handle this. We do have checks and balances in place for accountability with only one signature; still we want to be compliant with the law. Does this law apply to public libraries? What is acceptable practice?

Answer: The statute cited is part of an act originally passed by the legislature late in the 19th century. K.S.A. 10-801, for example, provides that “[w]arrants or warrant checks shall be prepared by the clerk, auditor, secretary, director of finances or finance department of the municipality or other officer or agency authorized by the governing body.” We quote from K.S.A. 10-801 because it is clear from a reading in sequence of the entire act that it – including K.S.A. 10-803 - is intended to apply to any “municipality,” and not just to cities.

So, what is a “municipality” for purposes of K.S.A. 10-803? Unfortunately, the term “municipality” is not defined within K.S.A. 10-801 *et seq.* However, it is defined elsewhere within the Kansas statutes. One of those definitions can be found in the Kansas cash basis law where, at K.S.A. 10-1101(a), the term is defined as:

. . . any county, township, city, municipal university, school district, community college, drainage district and any other taxing district *or political subdivision of the state which is supported with tax funds.*

Inasmuch as the definition quoted above does not specifically designate local libraries as included within the definition, we focus in on the italicized phrase to determine whether your library might be considered a “political subdivision of the state which is supported with tax funds” and, thus, a “municipality” for purposes of K.S.A. 10-803.

In discussing this matter with you we are advised that your library was created pursuant to K.S.A. 12-1218 *et seq.* Thus, while your library lacks authority to levy taxes, it is nonetheless supported with tax funds by virtue of an annual levy made on its behalf by the City. Is then your library a “political subdivision of the state” as that phrase is used in the definition of the term “municipality?” We believe that it is.

Attorney General Opinion 1998-39 involved an analysis of the term “political subdivision” as found in K.S.A. 12-16,102. Citing earlier AGOs the opinion noted as to the term “political subdivision” that “[g]enerally, it is used ‘as a reference to a subordinate governmental entity which exists for the purpose of discharging some function of local government within a prescribed territory and which has a governing body possessed of prescribed powers of self-government.’” While AGO 1998-39 does not limit its definition of the term “political subdivision” only to those entities with authority to levy tax, the context clearly supports the broader definition. Likewise, similar broad-scope language can be found in subsection (a) of K.S.A. 10-1101 (“political subdivision of the state *which is supported with tax funds*”). The legislature could have used the term “political subdivision of the state” and left it at that, but instead chose to make clear that political subdivisions of the state – as included in this particular definition – include those which merely rely upon tax funds without regard to the authority to levy tax.

Considering, then, the description of a “political subdivision” found quoted in AGO 1998-39, and applying that description to your library, we find that your library is a governmental entity, it was created under statutory authority, it is funded with public dollars, it serves a public purpose within a prescribed territory and it operates under the direction of a governing body which possesses powers of self-government. In short, your library is a “political subdivision of the state” as that phrase is used within the definition of the term “municipality.” Accordingly, your library is a “municipality” under K.S.A. 10-1101(a), and, as noted earlier, K.S.A. 10-803 applies to municipalities and requires, as you correctly point out, two signatures on all warrants and warrant checks. (See also, AGO 85-250, where it is concluded, without elaboration that hospital districts are bound by K.S.A. 10-803.)

Additionally, In regard to the comment by the auditor that the warrant signature requirement is not required by KMAG, the Statutory Compliance Checklist for All Municipalities (Appendix A, number 16 of the KMAG) addresses funds being disbursed as provided by law. It then cites K.S.A. 10-801 *et seq.* as one of the statutes to be reviewed and followed.

And, a comment from Roy Bird of the State Library:

Thanks for contacting the State Library about this. We advise libraries that at least two signatures are required on checks, the library board chair and the library board secretary. The chair can be a facsimile signature, but the secretary's must be original.

Many libraries have even more signatures on checks, and the requirement for the secretary instead of the treasurer can be confusing to them. We explain that the secretary's signature is confirmation that the chair's signature is legitimate. The treasurer apparently can sign, but there is no authorization for that.

I hope this helps. Please let me know if I can assist further.

We hope that this helps. Thank you for writing to us.

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Question: Hi! I'm working on a city audit and I have a question. Per the KMAG Compliance Checklist Item #26 for cities, it states that "the public hearing should be held at least 10 days prior to the date the municipality shall certify their annual levies to the county clerk." Can you tell me the Ks Statute that dictates that? I found the one regarding the "no sooner than 10 days after giving notice of hearing," but I can't find a statute to support the first part. Before I tell the city clerk they failed to meet the requirement, I'd like to find the actual statute. Thanks!

Answer: The statute in question is K.S.A. 79-2933 (below, in pertinent part). As an FYI, inasmuch as no penalty attaches to the failure to meet the August 15 deadline called for in K.S.A. 79-2933, we consider that statutory deadline to be directory in nature and not mandatory.

The hearing herein required to be held upon all budgets by all taxing subdivisions or municipalities of the state shall be held not less than ten (10) days prior to the date on which they shall certify their annual levies to the county clerk as required by law [August 25]. . . .

We can see where use of the word "should" in the KMAG checklist can make compliance sound mandatory, and agree, too, with not citing the city for a statutory violation.

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Question: Our firm's philosophy, being conservative, is to include one (per bank) \$250,000 FDIC coverage when calculating depository coverage to make sure deposits are adequately secured. The attached "Deposit Insurance for Accounts Held by Government Depositors" is from fdic.gov. We have questions about the article on page two, the highlighted sections. In the section after "In-state accounts," would you say that with the implementation of Dodd-Frank

Wall Street Reform - and our conservative approach - it is still appropriate to calculate depository coverage using one \$250,000 FDIC coverage (plus the new unlimited coverage for noninterest-bearing demand deposit accounts) or, based on the July 21, 2011 changes, would that not be appropriate?

Also, how do you interpret the second paragraph on the second page that is highlighted?

Thanks so much for your help, as always.

Answer: From the information provided it would appear that the typical Kansas municipality (let's assume the same "official custodian" for each account) has, from July 21, 2011 forward, FDIC coverage available to it as follows:

- (1) up to \$250K in FDIC coverage for the total deposit amount of its CD, savings, NOW, and money markets;
- (2) up to \$250K in FDIC coverage for the total deposit amount of demand deposit accounts which, as of July 21, 2011, may be interest-bearing; and
- (3) pursuant to the Dodd-Frank Act, through December 31, 2012 unlimited FDIC coverage of accounts that meet the definition of a "non-interest bearing transaction account." (The FDIC defines "non-interest bearing transaction accounts" as deposit accounts where (a) interest is neither accrued nor paid, (b) depositors are permitted to make an unlimited number of transfers and withdrawals, and (b) the bank does not reserve the right to require advance notice of an intended withdrawal. Money Market and NOW accounts are excluded from the temporary unlimited insurance coverage, regardless of whether interest is paid.)

Based upon the above it would seem that you might – for audit purposes and for audit years 2011 and 2012 - expand your calculation of FDIC coverage in those instances where the municipality has accounts meeting two or more of the above described accounts covered by FDIC.

Setting aside the calculation of coverage scenario and looking at this *from the standpoint of advising the municipality* on how it should compute uninsured deposits for collateral computation purposes, our concern might be with the temporary unlimited coverage for what appear to be non-interest bearing demand deposits. As an adviser to a municipality we might be inclined to suggest limiting the computation this year to no more than the coverage provided for the total of deposits in the municipality's CD/savings, etc. and demand deposit accounts (regardless of whether interest-bearing or not).

Of course, as an adviser to a municipality, and to be absolutely safe in the computation of uninsured deposits, the safest advice would be for the municipality to stick to the single \$250K FDIC coverage per bank.

We hope that this addresses your questions.

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Question: With the closing of so many post offices and many processing centers being moved from local communities, there was discussion at our last council meeting of setting up to do payments electronically with those companies that will allow it. I told the Mayor, Treasurer and Council that I would like to visit with your office regarding this due to the fact that the State has advised in the past that they would like to see two if not three signatures on all checks.

Is making payments electronically something that is considered an approved accounting practice for Municipalities?

Answer: Good afternoon. This probably is an issue in which technology is outpacing the statutes, with the issue of electronic payments not being contemplated when the legislation was written, nor does it appear that the issue has been addressed by amending the statute. K.S.A. 10-803 requires the warrant (check) to be signed by the chief executive of the government (for lack of a better term) and by another officer in the capacity of clerk, secretary, etc. In addition, K.S.A. 10-805 requires the treasurer's signature.

You raise two questions: 1) Are electronic payments a legal way of doing business? 2) If so, what accounting procedure should be in place to meet the statutory requirements?

The legality of payment by electronic means is one which might be directed to the city's legal counsel or to the League of Kansas Municipalities. In reviewing the statute, we see no case law or Attorney General opinions addressing the issue. Certainly, electronic payments are becoming a standard business practice. However, if interpreted by a court, would the court consider current business practices or would it be tied to the language presented in statute?

If you were to make the decision to proceed with making electronic payments, we would advise creating a number system to be recorded in the checkbook register (i.e. EP1, EP2, EP3) for the electronic payments. We would then suggest a coversheet with the corresponding EP number to attach to the invoice for payment. On that coversheet we recommend that you obtain the signatures that are required by statute, and then maintain the cover sheet and invoice for the accounting records.

We did pass along this question to the LKM and received back a message from Sandy Jacquot, the League's general counsel. In Sandy's opinion an electronic payment is permissible (she provided her opinion that K.S.A. 10-803 applies only if checks or warrants are used as a form of payment, and that other methods of payments, such as electronic payments, are permissible). Although we may not interpret the statute in the same manner, it is an opinion from an attorney, and provides the city a basis for its actions if it decides to pursue this practice. With that being said, we still believe the procedure of getting signatures on cover documents for invoices (or

better yet, on the invoice itself) that are paid electronically would still be sound accounting advise and practice.

Hope this information helps. If you have additional questions, please let us know.

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Question: As we understand it the bank in question owns several CDs, all of which are held by other institutions and each of which are fully protected by the FDIC. The bank would like to know if it may pledge these CDs as security for deposits made with the bank by the local USD.

Answer: The note which follows is an interpretation of K.S.A. 9-1402(d)(1) by the general counsel of the Office of the Bank Commissioner, as it relates to the question of whether a state-chartered bank may pledge its own CDs as security for deposit of public funds:

“Our agency [Office of the Bank Commissioner] has interpreted K.S.A. 9-1402(d)(1) to allow a state-chartered bank to pledge its own CDs as security for public funds to the extent there is FDIC insurance coverage, which is now at \$250,000. The public entity must also accept the type of security pledged, but the CDs would be an allowable type of security pursuant to K.S.A. 9-1402. I hope this helps to answer your question. If you have additional questions, please do not hesitate to contact me.”

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Question: Hi. We have a question regarding the reporting/maintaining fixed asset records. Is this the same as the Capital asset and Inventory reporting that is done on Form DA 84, 86 and 87?

The statute [K.S.A. 75-1120a] says the governing body of any municipality which has aggregate annual gross receipts of less than \$275,000 and which does not operate a utility, shall not be required to maintain fixed asset records. Is there some information on the requirements for keeping the fixed asset records in another statute for KMAG purposes? Is the fixed asset record to be reported on KMAG audits in notes or anything or is it just to be maintained by the municipality?

Thank you for any assistance or references you can provide.

Answer: We hope that what follows will answer your questions. If not, please let us know and we will give you a call to discuss further.

K.S.A. 75-1120a(a) requires, as a general rule, that municipalities conform to GAAP. Under subsection (b) certain small municipalities are exempted from the GAAP requirement of maintaining fixed asset records. And, under subsection (c), subparagraph (1), most municipalities have the choice of opting out of the GAAP conformance general rule, including the GAAP requirement of maintaining fixed asset records.

Breaking the statute down, here is our interpretation as it might relate to your questions:

- generally, all municipalities are required to conform to GAAP, including the GAAP requirement for maintaining fixed asset records;
- really small municipalities are not required to maintain fixed asset records;
- all other municipalities (with certain exceptions) can adopt a GAAP waiver, which would then exempt them from the GAAP requirement of maintaining fixed asset records;
- and, finally, those municipalities unable to waive the GAAP requirement, and which are not small enough to take advantage of the subsection (b) waiver, must maintain fixed asset records.

We were unable to locate any statute that addresses maintenance by municipalities of fixed asset records. In addition, the DA forms referenced are now listed as “obsolete,” although we believe that they would have represented the means of recording fixed assets by State agencies. And, we believe that fixed asset records, should such exist, are to be maintained by the municipality, and in a statutory basis audit are not reported in the notes or otherwise, except to the extent that the lack of presentation is noted in the mandatory note “Basis of Accounting.”

We hope that all of this is helpful.

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Question: Are you aware of a statute regarding an elected official that is several years in arrears on paying his property taxes on his house? The official pays just in time to keep out of foreclosure proceedings. Are there any other statutes that we should be looking at as auditors?

Answer: The municipal audit law provides in K.S.A. 75-1126 as follows:

When any audit under this act indicates violation of a penal statute or discloses reasonable ground for removal from office, it shall be the duty of the licensed municipal public accountant or accountants or certified public accountant or certified public accountants signing the report of such audit to file one copy of the report with the county attorney.

While this section of the law doesn't come right out and say that the audit report is required to describe in some fashion the behavior that is penal in nature or which provides grounds for removal from office, that is what is clearly inferred. Otherwise, providing the report to the county attorney would be a meaningless act. So, the question becomes whether your elected official's behavior is such that it reflects behavior that is criminal in nature, or is such that it would support his removal from office.

We looked at a number of statutes that at first blush appeared to be applicable to the question that you raise, but were not. We could find nothing in chapter 60, chapter 19, chapter 54, or chapter 79 that would make us feel comfortable saying that his behavior supports a proceeding for ouster from office, and there is nothing we came across indicating that failure to pay his property taxes on a timely basis is criminal in nature.

We believe your firm, as auditors of the municipality in question, is in compliance with statute and the KMAG if you do not disclose in your report the described behavior of this elected official.

We hope that this helps.

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Question: We are helping a little City that has never been audited! Do you know if the following KSAs are where we get the three signatures on a check???? Appreciate your assistance, because we get this question a lot. Thanks

K.S.A. 10-803. Signatures on warrants and warrant checks. Warrants and warrant checks shall be signed by the chairman, mayor, president, trustee, director or other chief official, or in the absence of such officer, by the officer authorized by law to act in such officer's stead, and by the clerk, secretary or auditor or like officer, and the seal, if any, of the municipality need not be attached or impressed or shown by facsimile: *Provided*, That in manager cities the manager and director of finance, or similar officer, if there be one, shall sign the warrants or warrant checks: *Provided further*, That a facsimile signature may be used when authorized by the official or officer as provided by article 40 of chapter 75 of the Kansas Statutes Annotated.

K.S.A. 10-805. Same; duties of treasurer; signature. Before delivering any warrant or warrant check to the payee the officer drawing the same shall present the same to the treasurer, who shall enter in a book kept for that purpose, the number, date and amount of such warrant, or warrant check, on what fund drawn, and the name of the payee, and thereupon sign the warrant or warrant check on the face thereof.

Answer: Yes, the statutes that you provide are the ones that set forth the check signatory requirements. After looking at this it reminded us that we addressed a question concerning

K.S.A. 10-803 some time ago, the issue being what is meant by the phrase “clerk, secretary or auditor *or like officer . . .*”

For small cities in particular with separation of duty issues this is one of those statutes that could use some revision (we take the position that with third-class cities “or like officer” can mean a city council member who is not otherwise required or authorized to act in the mayor’s absence, acknowledging that the council member is elected and the clerk is appointed).

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Question: This Home Rule thing has been really bugging me as I cannot seem to get my head wrapped around it. But I have a question regarding the application of Home Rule with regards to audit requirements:

The State Constitution under Article 12 Section 5 gives all Cities powers of Home Rule. Which gives the City the power to opt out of certain state statute requirements through Charter Ordinance. <http://www.kslib.info/constitution/art12.html>

Kansas Statute 75-1122: Requires municipalities with gross receipts in excess of \$275,000 or which has general obligation or revenue bonds outstanding in excess of \$275,000 to have an audit each year.

My thoughts:

The way I read the Constitution is that Article 12 Section 5 is giving power to all Cities under Home Rule and they must pass a Charter Ordinance if they want to be exempted from certain state statutes. However those State Statutes “cannot be enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities and enactments prescribing limits on indebtedness.” So I am thinking that KSA 75-1122 actually is uniform to all Cities, therefore the City could not pass a Charter Ordinance exempting them from the State’s audit requirements. (Chapter 12 under KSA is Cities and Municipalities)

Let me know your thoughts or if I am missing something in my interpretation. Is there a standard definition of uniform enactments?

Thank you. I really appreciate any insight you can give.

Answer: Even the appellate courts seem to struggle with consistent interpretation of Constitutional Home Rule.

In the audit case the ability to opt out comes from the fact that some cities are not required to have performed an annual audit due to the dollar threshold – while other cities are required to have such an audit - making the law non-uniform. We are attaching a link to an AGO that

discusses the very question that you raise. <http://ksag.washburnlaw.edu/opinions/1992/1992-093.pdf>

We hope that the attached is helpful. Thank you very much for writing and for your thoughts.

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Question: I'm requesting your input on an issue that has come up as it could impact local governments at both the city and county level. House Bill 2192 (2011) amended the fees charged for VIN inspections. The County Treasurers' Association is interpreting the wording in the bill to mean the VIN fees retained by local law enforcement are to go into a special law enforcement trust fund instead of the governments' general fund.

We don't see where the amendment to the statute requires this and past legal interpretations we've received from county attorneys indicated the fees were officers' fees that should be receipted into the county general fund.

What are the thoughts from Division of Accounts and Reports on this issue?

Thanks

Answer: Good afternoon. Our opinion/response is divided between counties and cities due to the statutory authority found.

For counties – K.S.A. 19-506 states that the county treasurer is to receive all monies that belong to the county, from whatsoever source they may be derived. K.S.A. 28-617 requires all officers of the county to remit the fees they collect to the county treasurer, with the treasurer depositing the funds in the county general fund, unless the monies are specifically authorized to be retained by the county officer. We do recognize in reading House Bill 2192, that if the designee is the county law enforcement agency the fee is to be *paid to* the law enforcement agency. However, that language does not appear to be specific enough to be interpreted to mean that the law enforcement agency can *retain* the fee.

For cities – Unfortunately, we do not see (or cannot find) language for cities similar to that which exists for counties. However, one could argue that the legislative intent of the act in relation to the fees is to reimburse – at least partially - the Highway Patrol, the new vehicle dealer, or designee for the labor devoted to vehicle inspection. Since most law enforcement expenditures for both counties and cities derive from the General Fund, it would appear most appropriate to deposit receipts into the General Fund.

Again, even with cities, we don't see statutory language in HB 2192 specific enough to warrant the fees being held in a special fund. But for the sake of argument, let's make that conclusion. If we accept the position that counties and cities can deposit monies into these special trust funds,

then the question becomes under what circumstances can monies be spent from these funds? A fair reading of the statute demonstrates that the statute is clearly silent on that issue.

Based on our review of the legislation, we would agree with your position that these fees need to be remitted from the law enforcement agency to their respective city or county treasurer, with the treasurer then depositing same into the general fund.

We hope this information helps.

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Question: We have a question regarding auditing/accounting services. It was our understanding that there was a statute that allowed for Cities to sign multi-year contracts for engineering, accounting, etc. services. Do you happen to know what statute that is? We have had the question brought to us by an attorney and couldn't locate the statute number.

Answer: There are a couple of Kansas court decisions in which certain multi-year employment agreements were held to be acceptable under the cash basis law. Reliance upon those Kansas appellate court cases can be found in Attorney General opinion 2003-8 (excerpt below) where the conclusion reached is that a multi-year employment contract would meet the cash basis law test so long as the obligation to pay is subject to a contingency (e.g. your performance of audit work) and that funds are available at such time to pay the contractual obligation. The situation you describe would appear to be analogous.

This general grant of statutory power is subject to limitations contained in other applicable statutes.⁽¹¹⁾ A community college is a "municipality"⁽¹²⁾ subject to the cash basis law.⁽¹³⁾ "In general, the cash basis law prohibits municipalities from creating indebtedness in excess of funds actually on hand in the treasury of the municipality. K.S.A. 10-1113. Contracts entered into by municipalities in violation of the cash basis law are void. K.S.A. 10-1119."⁽¹⁴⁾ The cash basis law, however, does not prohibit a municipality from entering into an agreement that provides for the payment of funds in future fiscal years, provided the obligation to pay is dependent on a contingency and funds necessary to meet the obligation will be available after such contingency is met.⁽¹⁵⁾ "[T]he general rule [is] that compensation for services becomes due only when those services have been rendered."⁽¹⁶⁾ Neosho County Community College does not incur an indebtedness or obligation to compensate the President for services until the end of the payroll period for work done during that pay period. Funds necessary to cover the compensation due the President should be available at that time. Under such circumstances, the employment contract does not violate the cash basis law.

<http://ksag.washburnlaw.edu/opinions/2003/2003-008.htm>

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Question: The City had several capital improvement projects for which temporary notes were issued, the proceeds of which were recorded into the various capital project funds. The City then issued a second series of temporary notes, the proceeds of which were deposited into a specially created fund entitled 2010 Temporary Note fund.

Proceeds in the 2010 Temporary Note fund were used to pay off the first series of temporary notes, some accrued interest, and some additional project expenses. There remains in the 2010 Temporary Note Fund a balance of approximately \$6,000.

For what purposes can the remaining \$6,000 in the 2010 Temporary Note Fund be used, and how do we report the 2010 Temporary Note Fund on the Statutory Basis Financial Statements.

Answer: In our opinion the remaining \$6,000 can only be used for project expenses or to be applied toward reducing the debt (either the temporary notes directly or toward principal and interest on the bonds issued to retire the temporary notes). For statutory financial statement presentation, if the City wishes to maintain the separate fund we would recommend that the 2010 temporary note fund be consolidated into the debt service fund (or bond and interest fund) for the purposes of KMAG statements 1, 2, and 3.

We hope this information helps.

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Question: I had an attorney for a county call this afternoon with a question and did not see anything specific in the statutes that I could find addressing his issue.

Is there any statutory authority for a county - or city for that matter - to have a "Special Police Fund" bank account (used for paying informants, drug buys, etc.) and not report the activity on the county or city's books? The bank accounts are setup under the county or city's id number and appear on bank confirmations for the entity.

Occasionally, we see random small bank accounts (usually emergency management related accounts) that somehow get set up using city id numbers, that we recommend be under the control of the treasurer of the City and report the activity on the City's books. Is there any exception provided for special police funds?

Thank you once again.

Answer: To our knowledge, we have never heard of a "Special Police Fund" for this purpose, nor can we find any reference in statute for a "Special Police Fund." The only guidance we are finding is under the Banking Code with the deposit of public monies (K.S.A. 9-1401 *et seq.*). K.S.A. 9-1401(a) reads as follows:

The governing body of any municipal corporation or quasi-municipal corporation shall designate by official action recorded upon its minutes the banks, savings and loans associations, and savings banks which shall serve as depositories of its fund and the officer and official having the custody of such funds shall not deposit such funds other than at such designated banks, savings and loans associations, and savings bank.

In our opinion, if the governing body approves the account, designates who has control of the account, and follows the other requirements of K.S.A. 9-1401, the account can probably be established.

The account should be included on the municipality's books but, due to the sensitive nature of the expenditures, descriptions should probably be more generic and less specific concerning who, what, when, etc. Additional internal controls might have to be developed to ensure monies in the account are actually spent as reported and also to ensure the confidentiality needed on the expenditures.

Not a great deal of guidance on this issue. Hope the information helps.

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Question: I am having a discussion with our auditor about whether or not the Housing Authority should be audited as a component unit. This is the first time this issue has been raised. The only group that we now have audited as a component unit is the Library Board. From what I have read in the Kansas Municipal Audit Guide auditing component units is not required and, in fact, are typically not audited in Kansas.

The City does the payroll for the housing authority and then the housing authority reimburses the City for this expense in full. We do not pay for any other expenses but in the past have budgeted a small appropriation for resident activities. That appropriation was taken out of the budget last year. The City Council does appoint members to the Housing Authority Board at the recommendation of the Housing Authority.

Can you please provide your opinion if the group should be considered a component unit of the City. Also, can you tell me if it is better to continue to audit our component units or if it is acceptable to discontinue auditing component units, including the Library Board?

Thank you for assistance on this matter.

Answer: Good afternoon. There are really several issues here: are the entities a component unit? are they subject to audit? and if they are subject to audit, how are they to be reported?

The first issue is whether the Library Board and Housing Authority are component units of the city. To determine this, we would point you to the tests found in accounting pronouncements: 1) appointment of the unit's governing body; 2) fiscal dependence on the primary government; and, 3) the potential that exclusion would result in misleading financial reporting. If any one of these conditions is met, the entity could be considered a component unit.

If we understand correctly, the governing body of the city appoints the majority of both boards, so the governing body appears to have some influence over both bodies. In addition, the governing body of the city levies a tax for the library, and may also have some influence over the library budget. It also appears [from additional information provided] that the governing body of the city also has some control of the finances of the Housing Authority. Based on these factors, we believe the both entities would be considered component units.

Are the component units required to be audited? K.S.A. 75-1122 *et seq.* generally requires a municipality in Kansas to be audited if it has aggregate gross receipts in excess of \$275,000, or revenue or GO bonds outstanding with a principal amount outstanding in excess of \$275,000. If the library or housing authority meets either of these criteria, they would be required to be audited. As the KMAG points out on page 5, “[t]ypically in Kansas, component units will not be presented in the primary government's financial statements because the component unit will not be audited because Kansas law does not require it to be audited.” (See, K.S.A. 75-1122 *et seq.*) However, if the component units are not included in the municipality’s financial statements, the auditor must consider the omission of the component units in forming his/her opinion.

If the component unit is required to be audited, KMAG basically presents two options for presentation. One would be a separate audit report with an opinion on the component unit financial statements. Or, the component unit financial statements can be included in the primary government financial statements.

One final issue of consideration entails transparency. Although audits do present an expense to a municipality, often the citizens of a community feel more confidence in local government if an entity is reviewed by an outside source.

Hope this information helps.

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Question: Regarding a City in the State of Kansas, I have received the question as to whether a City can purchase physical gold with idle funds. I directed the City to KSA 12-1675 and 12-1677b.

The City is stating that it is not for investment purposes (earnings) but rather to hedge against a financial collapse.

Have you received this question before and is there any exception to 12-1675 for the purchase of precious metals by a City? Thank you.

Answer: Good afternoon. After reading this I am in agreement with you that the purchase of physical gold is not listed as an investment vehicle under the provisions of K.S.A. 12-1675 and K.S.A. 12-1677b.

Although your client may be arguing that the purchase and physical possession of gold is not an *investment*, but rather a *hedge*, your client remains a municipality subject to the idle funds law and, as such, “may invest any moneys which are not immediately required for the purposes for which the monies were collected or received” only in those investment vehicles specifically set forth in the law. (See K.S.A. 12-1675). The physical possession of gold is not one of the investments listed in K.S.A. 12-1675, nor is it listed in K.S.A. 12-1277b for those municipalities which have approved written investment policies.

Hope this information helps.

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Question: How long does a municipality have to begin a project after they have issued GO Bonds and received the bond proceeds? Is there a certain amount of time they have before they are in violation for not beginning the project in which the bonds were issued for.

Thanks for your help!

Answer: Good morning. We are not aware of any statute, case law, or Attorney General opinion that provides guidance on how long a municipality has to begin a project after the issuance of bonds. One would assume that a municipality would start the project within a reasonable amount of time. We did a quick review of the general bond law (K.S.A. 10-101 *et seq.*) and found no guidance.

Hope this information helps.

* * * * *

Question: Historically, our County accounts for our state/federal awards as a reimbursed expense. This is for FEMA and KDOT funding in particular. Obviously we don't budget them

since they are a reimbursed expense from disaster work or road projects. Our Auditors have been ok with this in the past. This year, they have changed their view on this. They want to capture all state/federal awards as revenues and not a reimbursed expense. This is going to cause us budget issues.

Can you send me any information on how the state recommends this be handled?

Answer: We really don't see this as an issue for the audit. In the last audit year your audit was a statutory basis audit, and we assume the same for the upcoming audit. If the auditors want to count the awards as revenue, that would be fine. There would just be one or more budget credits on Statement 2 (which serves to increase budget authority), along with corresponding budget credits on Statement 3 (the individual fund pages).

Again, we wish to distinguish how we treat the budget credits on the financial statements as opposed to how they are treated on the budget forms. For budget purposes, you are okay to continue treating the described payments as reimbursed expense.

* * * * *

Question: Our auditor indicated I should contact the state on this one. Last year, the County Commission approved a no-interest loan of \$50,000 to the bus service (not-for-profit public transportation service). It is for seed money to start the construction of their new facility. They will pay it back upon completion of the KDOT reimbursed project.

In asking the auditors if they had issues, they indicated the question is the proper classification of the loan. In other words, is it an investment of idle funds? Investment of idle funds should be in investments prescribed by K.S.A. 12-1675, which a loan to a non-profit is not.

The County Commission position is that the loan is an expenditure when distributed, and revenue when repaid, and not an investment. Thanks for your help!

Answer: Good morning. The leading case concerning the public purpose doctrine in the state of Kansas is *Duckworth v. City of Kansas City*, 243 Kan 386, 758 P.2d 201 (1988). In that decision the Kansas Supreme Court upheld the use of public monies in the form of direct loans and grants by a municipality to private individuals as long as the appropriation is for a public purpose and promotes the public welfare. In this particular case, the city issued grants and direct loans to private individuals and entities to revitalize and rehabilitate the downtown Kansas City business area.

So it would appear that under our present circumstances, the question becomes does the loan provided by the county constitute an investment subject to the provisions of K.S.A. 12-1675 *et seq.*, or should the loan be treated as a expenditure. When reviewing K.S.A. 16-1275, it would

appear that if the loan is treated as an investment, the loan would not be recognized as one of the investment vehicles allowed by statute.

While the *Duckworth* decision does not directly address the accounting of such loans, the dictum of the opinion would seem to support the position that the loan should be treated as an expenditure. In the syllabus of the opinion we see the following language:

As a general rule, a municipality may authorize by ordinance the appropriation of public monies for private individuals. . . . (Emphasis added)

If the monies have been appropriated (set aside for specific use), can the argument be made that these monies are also idle funds subject to the provisions of K.S.A. 12-1675?

Many times it is difficult to reconcile the legal doctrine to the accounting practice, and this may indeed be one of those instances. However, with the courts holding that public purpose loans are legal, it would be our opinion that the most pragmatic way of handling the loan is as an appropriation (expenditure) from the fund rather than an investment.

We hope this information helps.

* * * * *

Question: Can you tell me how the Division of Accounts and Reports would view an "except for" opinion on the City financial statements versus a budget law violation in the Water fund of say \$159,000?

I'm pretty sure the City administrator is not going to agree to the additional encumbrance of the first water right purchase that I sent you. The additional encumbrance, if properly recorded, would be \$192,000 which is material to the financial statements. Thank you

Answer: If we understand correctly, instead of a budget law violation you are going to treat the first agreement as there being enough money being on hand to cover the purchase, but the city just failed to make an encumbrance of the funds. If there was enough money in the fund for the purchase, we could probably live with the "except for" opinion.

However, one would think the city would be more interested in an unqualified opinion with a cash basis law violation, as opposed to a qualified opinion. At least from our stand point, there are several audits filed every year citing a cash basis or budget law violation, and other than reviewing and noting it, there is usually no adverse impact to the municipality from this office. The same could also be said of a qualified opinion.

Hope this information helps.

* * * * *

Question: I had a question concerning the GAAP Waiver. I know it has to be passed by resolution every year, but is there a specific time to have it adopted by?

Answer: Good morning. The GAAP waiver is governed by K.S.A. 75-1120a, and basically states that waiver should be granted when requested by the governing body; and that the governing body, prior to making the request for the waiver, shall pass a resolution. The statute is silent on when the resolution needs to occur. Although we would prefer the resolution take place in the fiscal year to which the waiver pertains, waivers have been allowed when the resolution has been passed in the following fiscal year, prior to the completion of the audit.

Hope this information helps.

* * * * *

Question: If a USD has been using GAAP in the preparation of their financial statements and reports is there any reason why they cannot change and use the statutory basis for the current year?

Answer: Good morning. The audit law, K.S.A. 75-1117 *et seq.*, requires GAAP statements unless the governing body, by resolution, makes a finding that financial statements prepared in accordance with GAAP are not relevant to the requirements of the cash-basis and budget laws of this state and are of no significant value to the governing body or members of the general public.

So as long as a resolution is passed, we see no reason to prevent the governing body to change to the statutory basis. However, please note that if there is a bond ordinance, contractual, or other legal requirement that the financial statements be prepared in accordance with GAAP, this statute will not supersede those requirements.

Hope this information helps.

* * * * *

Question: I already found where reimbursed expenditures do not have to count against the budget. It appears the standard is that the reimbursed expenditure must be closely related to an actual expenditure. The concept of bond refunding is that old bonds are replaced with newly issued bonds. The bond proceeds reimburse all expenses (usually) the City incurs during the

process of a bond refunding. Would this not be example of an expense reimbursement creating a budget credit? Thanks

Answer: Good morning. We have reviewed the Budget Law statutes (K.S.A. 79-2925 *et seq.*) and believe that K.S.A. 79-2935 allows for expenditures in excess of the budget amount in relation to bond refunding. The pertinent provision reading as follows:

. . . indebtedness may be created in excess of the total amount of the adopted budget . . . when provision has been made for the payment by the issuance of bonds

It could be argued that when the Legislature enacted this section bond refunding was not the issue being considered. However, based on a fair reading of the statute, it would appear that bond refunding would meet the statutory criteria whereby a municipality might lawfully exceed budget authority.

Assuming, then, that expenditures in excess of budget authority and associated with bond refunding fall under the provision of K.S.A. 79-2935, the question then moves to how to report on the budget documents.

The first approach would be to show receipts and expenditures as normal, and let expenditures exceed the adopted budget limitation. This would seem to be allowed by K.S.A. 79-2935, but becomes problematic on the budget forms, which may indicate a possible budget law violation. It would then be up to the budget preparer to explain to the governing body and citizens that the budget law was not violated due to the provisions of K.S.A. 79-2935. If this option were exercised, the budget document should clearly identify the revenue line item as bond refunding proceeds.

The second option would be to amend the budget. However, since K.S.A. 79-2935 allows for the increased expenditures, it would seem counter-productive to amend the budget (especially if the only fund needing to be amended is the one paying off the old bonds). While certainly not required, this alternative may be an option, especially if other funds in the budget need to be amended.

The third option would be to record the bond proceeds as a negative expenditure as allowed for reimbursed expenses under K.S.A. 79-2934 (which you discussed). Although we may differ on opinion if a bond refunding is considered a reimbursement as contemplated in the statute, it does appear to be a pragmatic solution when recording the bond refunding on the budget documents.

A final option might be to establish a capital improvement fund in which to deposit the bond refunding proceeds, and to pay the previous bond issues and other debt out of that fund. A capital project fund is non-budgeted and, therefore, dollars in the fund may be spent without necessity of budget authority, and without fear of budget law violation. The sticking point with this approach, however, comes down to statutory interpretation – does this fund qualify as a capital projects fund as defined in statute?

In discussions among ourselves we don't have an issue with any of the options discussed, but would like to present the question to the CPA community to determine if there are other issues that we should be aware of before promoting a particular option.

In the meantime, to address your current issue, we would definitely advise that the budget does not have to be amended and, since the budget credit option is being used by many practitioners currently, we don't see an issue with its continued use until we receive more feedback from the CPA community.

Thank you for presenting the question.

* * * * *

Question: I have a client that has forwarded me the following attachment and the information below explaining why they feel per KSA it is ok to net reimbursed expenses in the expense line item on their books and thus their financial statements. Our firm has always interpreted this and the KMAG guide to NOT net the reimbursed expense in the expense line item...we should be showing the expense in the expense line item and then show the reimbursement as a revenue line item called "reimbursed expense" and then show the budget credit if needed to avoid a budget violation. What are your thoughts on this?

REIMBURSED EXPENSES – Against Expenditure Line Item

Attached is the Kansas Statute substantiation to allow reimbursed expenses to be recorded as a reduction to the original expenditure if reimbursed expenses exceed the amount budgeted for reimbursements as line item revenue. (Statute – 79-2934)

Thank you as always for all of your assistance.

Answer: Good afternoon. What we have here is the difference between budgets and financial statements for reporting of reimbursed expenditures. You are correct as it relates to the financial statements, and your client is likely correct as it relates to the netting of expenditures for budget purposes.

K.S.A. 79-2934 and K.S.A. 12-1663 deal with reporting expense reimbursements for budget purposes; our budget manual provides additional guidance. And, KMAG is the standard to be used for preparing financial statements (budget credits are addressed on page B-7 of the KMAG).

For budget purposes K.S.A. 79-2934 provides in pertinent part as follows:

If any indebtedness is reimbursed during the current budget year and the reimbursement is in excess of the amount which was shown as reimbursed expense in the budget of revenues for

the current budget year, the charge made shall be reduced by the amount of the reimbursement.

In addition, K.S.A. 12-1663(a) provides in relevant part as follows:

Where a public agency spends from budgeted funds and later is reimbursed by federal aid, such expenditure from budgeted funds shall be a reimbursed expense and if received after the budget year, shall increase the current budget to the same amount unless the budget had anticipated and included the reimbursement as income.

We hope this information is helpful.

* * * * *

Question: Our client, a USD, has deposited idle funds with a local bank and the bank has pledged as security for such deposits – at least in part – various CDs owned by the bank, the amount of each being at or below maximum FDIC coverage of \$250,000.

The CDs in question represent obligations of several banks within and without Kansas. The depository bank does not, in any case, have deposits exceeding a total of \$250,000 with any one bank of which the pledged CDs represent an obligation.

Answer: Good afternoon. Thank you for your challenging question. To summarize, the question raised by your client is whether these CDs represent an allowed security under K.S.A. 9-1402. In short, the answer is that the described CDs are an authorized security under K.S.A. 9-1402(d)(1), which provides in pertinent part as follows:

(d) Such bank . . . may deposit, maintain, pledge, assign, and grant a security interest . . . for the benefit of the governing body of the municipal corporation . . . securities, security entitlements, financial assets and securities accounts owned by the depository institution . . . the market value of which is equal to 100% of the total deposits at any given time, and such securities, security entitlements, financial assets and securities accounts . . . shall consist of the following and security entitlements 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 [certain] obligations . . . and securities of United States sponsored corporations . . . ;

Of course, K.S.A. 9-1402 contains a variety of options appropriate to secure a deposit of public funds, none of which are clearly identified as “certificate of deposit.” However, the phrase in (d)(1) of “obligations that are insured as to principal and interest . . . by any agency” of the United States of America is what leads us to conclude a CD is an instrument that may lawfully be used to secure a pledge of public funds.

The one-page KBA scan that you e-mailed to us is what caused us to look closer at the phrase just quoted, vis-à-vis CDs. Quite honestly, even after a first, second, and third reading of the statute the language in question did not jump out as a possible answer to your question. Now it does.

Reinforcing the opinion that CDs are acceptable are conversations that we had with the director of investments for the Pooled Money Investment Board (PMIB), and with the general counsel of the Office of the Bank Commissioner.

The PMIB director of investments deals with virtually identical language related to deposit of State moneys (see, K.S.A. 75-4201(k)(1)) and advised that the PMIB interpretation is that CDs fit the statutory definition, although this representative considers the matter a “gray area” and is not certain that the original legislative intent was to include CDs along with Fannie Mae, Freddie Mac, etc. The PMIB does not, we were told, allow pledge of CDs by its depository banks, but that this choice is based upon factors other than statutory interpretation.

The general counsel of the Office of the Bank Commissioner advised that its office issued an internal interpretation on this issue back in 1988, opining that CDs are an appropriate pledge to secure municipal deposits, and that its bank auditors are instructed to abide by that interpretation.

Based upon the above we agree that CDs meet the statutory definition of K.S.A. 9-1402(d)(1).

Along with the above, and as you know, it is necessary that the depository bank comply with the provisions of K.S.A. 9-1405 (deposit of securities in a securities account, written custodial agreement, written security agreement).

We hope that all of this is helpful.

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Question: If a person serves as a City Clerk of one small city and is asked to be the City Treasurer of another City...do you know of any conflicts in the Statutes of holding both positions in two different cities?

Answer: We're not aware of any statutes that would prohibit a person from holding both of the offices that you describe. Assuming that neither city has policy that would prohibit such, the question becomes one of incompatibility of public office, a common law doctrine recognized by courts in Kansas. In essence, the doctrine provides that holding the two offices is not permissible when the duties of one interfere in some manner with the performance of duties of the other. It's not a question of whether there are enough hours in the day to do both.

For example, if one position has supervisory authority over the other, or has the authority to hire and fire the occupant of the other, the two offices are incompatible (e.g. in a commission/manager form of government it would likely be a violation of the doctrine for a person to be a city commissioner while, at the same time, holding the office of city clerk). In your case we don't see anything that would render these two offices incompatible, such that one person would be prohibited from occupying both. Significantly, these are different governmental entities, making the answer even more clear.

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Question: We are working on a county new to us. We have always had fire districts that have been part of the county and financial statement information has either been included as a fund or a component unit. The county we are working with now indicates the fire districts are not part of the county. Everything we have found indicates they are formed by the county; county commissioners are governing body or delegate that authority, and etc. It appears based on statute 19-3601 and subsequent statutes in that section indicate the county's responsibility.

Are fire districts essentially run by the county- and therefore must be included in the county's audit? Also, if the district has received federal funds does that amount not have to be included in accumulated federal funding to determine single audit requirements? We look forward to hearing from you. Thank you

Answer: Good Morning. If the fire district was created under K.S.A. 19-3601 *et seq.*, and the governing body of the fire district is composed of the county commissioners, then the fire district is a component unit of the county and the financial statements should be blended (See KMAG guidance, page K-4).

The question concerning the single audit is, basically, if the fire district is a component unit and it receives federal monies, does the fire district federal award need to be added to the county's in order to determine if the Single Audit Act threshold is met? In our opinion, if the financial statement presentation is blended, then all federal grants received by the county and fire district should be combined to determine if the Single Audit Act threshold is met.

* * * * *

Question: Good afternoon. We are concluding the audit report for USD #1, which merged with USD #2. USD #1 remains; USD #2 no longer exists. On July 1 of last year USD #1 received the remaining monies from USD #2 and recorded the amounts on their books in the respective funds.

Do you have guidance on how you want this shown on the KMAG audit report for a school merger? Should we adjust beginning balances and show a schedule in the notes on how the

monies were combined, or present the monies received from USD #2 as a cash receipt for the fiscal year in the respective funds of USD #1?

Answer: Our opinion, when reviewing this issue, would be to list the receipt of monies as a line-item in each fund due to better transparency of the transaction. Of course, for both methods footnote disclosure would be needed. We see where this issue is a GASB research project, but don't find that any final guidance has been issued. Even if GASB issued guidance, under the new KMAAG, for regulatory financial reporting, the GASB guidance would not necessarily be followed unless the Board agreed to adopt the GASB.

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Question: We are finishing up some of our USD audits and I'm doing some viewing of USD audits that have already been submitted for this 2011-12. It was my understanding that referring to KMAAG regulatory statements did not go into effect until 2013. However, I am seeing audit reports referring to KMAAG, and regulatory based financial statements and the new KMAAG fund titles instead of KMAG financial statement(s) and statutory based financials and previous fund titles.

This year is our Peer Review year and I don't want to early implement ideas that don't go into effect until 2013. I know the technical amendment 2011-1 offers early implementation of handling of state payments at year end and issuing an auditor's report on a single financial statement, but I didn't think it addressed early implementing the entire 2013 KMAAG concepts.

Is referring to KMAAG and regulatory based financial statements acceptable for 06/30/2012 USD audits?

Answer: Good Morning. You are correct that the 2013 Kansas Municipal Audit and Accounting Guide (KMAAG) is effective for audits for years ending on or after December 31, 2012. The technical amendment does allow for early implementation of the USD reporting and single financial statement, but the other concepts are not effective until the later date. From the State's perspective, we are not overly concerned with the change of reference to KMAAG, regulatory basis, or new titles that may be reported. However, from your perspective of peer review, we believe that you are correct in only performing the changes allowed by the amendments and following the 2011 KMAG for the remainder of the issues.

Hope this information helps.

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Question: I had a few questions on Kansas Statutes. The KMAG General Checklist question 4 states: Municipality has evidence that custodial agreements (prepared by custodian) and security interest agreements (prepared by depository): 1) are in writing, 2) are properly executed and approved, and 3) have approvals reflected in the minutes of the custodian and depository. (K.S.A. 9-1405).

I read the statute and it doesn't appear that the municipality would actually have to know that #3 has happened, is that correct? I've always been a little fuzzy on how to test for compliance with this statute.

Answer: Good afternoon. Your question is a very good one. In a nutshell, short of the depository bank providing to the municipality a copy of the bank's board or committee meeting minutes reflecting approval of the security agreement, exactly how does the municipality know of the required statutory approval and, for your purposes, how do you test for compliance? Going further – and this is your question – is there statutory authority to support the KMAG requirement that the municipality obtain and hold such meeting minutes?

On its face the last sentence of K.S.A. 9-1405(c) imposes an obligation unique to the depository bank: approval by its board of director or its loan committee of a security agreement vis-à-vis a municipality deposit, and reflection in the board or committee meeting minutes of such approval. Is it then incumbent upon the municipality to insure, in some manner, that such action took place? The most certain means of insuring that the appropriate action occurred would be for the municipality to obtain a copy of the meeting minutes.

Pursuant to the Uniform Commercial Code, K.S.A. 84-9-201 *et seq.*, a *security agreement* as to the pledged securities provides the municipality protection against third party purchasers of the securities and creditors of the depository bank. What, then, does the banking code require in this instance for creation of a security agreement?

It would appear from the language of K.S.A. 9-1405(c) that approval of the security agreement by the board or committee, evidenced by meeting minutes, is a statutory prerequisite to creation of the security agreement. Absent an agreement executed in compliance with the statute *it is at least arguable* that the municipality might, in a worst-case scenario, risk loss of its priority status as to the pledged securities.

In summary, it must be acknowledged that K.S.A. 9-1405(c) does not clearly impose upon the municipality a duty to obtain evidence of depository bank board or committee meeting activity. However, considering overall the duties imposed upon municipalities pursuant to state law as such may relate to protection of public funds, coupled with the responsibility of the Director of Accounts and Reports under K.S.A. 75-1117 *et seq.* to formulate a system of auditing, the KMAG interpretation is prudent in its expectation that the municipality obtain for its assurance a copy of meeting minutes showing compliance by the depository bank with the requirements of K.S.A. 9-1405(c).

Thus, in answer to your specific question, the municipality should know that #3 has occurred.

We hope that this helps.

* * * * *

Question: I have had a few cities wanting additional guidance on K.S.A. 12-1608 regarding publishing financial information an annual basis. It seems to me that they would essentially just have to publish the ‘Summary of Cash Receipts, Expenditures, and Unencumbered Cash Balance’ (i.e., pg. 2 of their KMAG financial statements). Is that correct? Are there any examples they could follow on exactly what to publish?

Answer: Good evening. Thank you for writing. We agree with your interpretation of KSA 12-1608. Paraphrasing, it requires that the published statement show for each fund (1) the cash balance at the beginning of the quarter, (2) total receipts [during the quarter], (3) total expenditures [during the quarter], and (4) the ending cash balance, along with outstanding warrants, notes, bonds, etc.

As far as the cash is concerned, a published *quarterly* Statement 1 would comply with the statute. The statement might need a little modification to convey the warrants, notes, bonds, etc., information, but that can certainly be summarized, we would think, as the statute calls for the “amount” of each.

We went out and tracked down what City X publishes (attached .pdf) and it appears to be an in-house version of Statement 1, with modifications as needed for the summarized debt piece of it. They also have a summarized “cash and investments” piece, although we do not see where that is necessarily required by the statute.

We hope that this helps.

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Question: Is the X Utility Authority required to submit a budget to the county clerk?

Answer: Since the UA was created by interlocal agreement of two cities, fees are collected instead of levied taxes from the cities, and the UA does not have authority to levy taxes in support of itself, the UA does not meet the definition of a “municipality” as provided for in K.S.A. 79-2925 and K.S.A. 10-1101, and is not, therefore, required to submit a budget. This opinion is supported by AGO 82-220.

Though an annual budget is not required, an annual audit might be required as the UA does fall under the definition of a “municipality” as provided for in K.S.A. 75-1117 (Kansas Audit Law).

We hope this information is useful.

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Question: Good morning, hope all is going well for you. We have been down this road before so I am attaching the e-mail from 2009.

Unless the Sheriff can point to specific law that allows the Sheriff to avoid paying over the fees collected to the County Treasurer, as required generally by KSA 28-175, it certainly appears to me that KSA 28-175 controls as to disposition of the VIN check fees. The statute dealing VIN fees merely provides – in my opinion – for splitting of fees between the KHP and designee. As it relates to the Sheriff as KHP-designee, KSA 8-116a does not provide authority for disposition of those fees once collected by the Sheriff.

I did look at several Attorney General opinions, but did not find one on point. . . .

I am working on an audit and the Sheriff is adamant in his belief that the change to K.S.A. 8-116a allows him to keep the VIN fees. He is stating that 8-116a(d)(2) gives him the authority to retain the fees. The section reads: “. . . If the designee is a city or county law enforcement agency, then the balance shall be paid to the law enforcement agency that conducted the inspection.” The sheriff’s office is arguing that the wording of KSA 8-116a (d)(2) was revised and does say that the “charges shall be retained by such designee.”

I do not argue that the law enforcement agency retains the portion not remitted to the Kansas Highway Patrol; however, I believe that the VIN fees should be remitted to the County Treasurer just like any other fee collected by the various offices (mortgage registration, tipping fee, etc.) per K.S.A. 28-175.

Thanks for your assistance.

Answer: Good morning. K.S.A. 8-116a was amended twice during the 2011 session (chapters 45 and 91 of the 2011 session laws; chapter 45 was effective 4/13/2011, and chapter 91 was effective 7/1/11). Subsequent to these amendments an AGO was issued in regard to this statute (2012-10, issued April 18, 2012), and below is language in the opinion specific to the question with which you are dealing:

This office has consistently opined that county officers who collect fees for the performance of official duties or obligations must pay such fees to the county treasurer pursuant to K.S.A. 28-175 in the absence of clear, express statutory authorization to retain such fees. Because the legislature has not amended K.S.A. 28-175 since those opinions were issued, we believe

the reasoning therein continues to be persuasive. K.S.A. 2011 Supp. 8-116a authorizes VIN inspection fees to be paid to a county law enforcement agency for the performance of such inspections, but the statute does not specifically authorize the county law enforcement agency to retain such fees. As such, we find that K.S.A. 28-175 is dispositive, and we opine that a sheriff may not retain VIN inspection fees in an account outside the county financial system. The sheriff must pay such fees to the county treasurer and the Board of County Commissioners may later appropriate such fees to the sheriff's department.

As you can see from the quoted language, in the absence of specific authority allowing the sheriff to retain the VIN fees, those fees must, per K.S.A. 28-175, be paid over to the county treasurer.

The language upon which your sheriff hangs his or her hat (“shall be retained by such designee”) was already in place at the time of the 2011 amendments, and is not new language. Regardless, it is clear that the AG’s office based its opinion on the law as amended in 2011, and despite those changes arrived at the conclusion that your sheriff is not entitled to escape the directive of K.S.A. 28-175 and keep for himself or herself the VIN fees. The following quote comes directly from the April 2012 AGO. Please note the underscored language used in this passage; clearly, the AGO is based on K.S.A. 8-116a as it existed following the 2011 amendments, as the underscored language was added in 2011.

We first address the issue of whether a county sheriff may hold fees for VIN inspections in a bank account outside the county financial system. The Kansas Highway Patrol (KHP) is responsible for performing VIN inspections on certain vehicles. The KHP superintendent may designate a county law enforcement agency to perform such inspections. If KHP designates a city or county law enforcement agency to perform VIN inspections, KHP retains ten percent of the inspection fee, and “the balance shall be paid to the law enforcement agency that conducted the inspection.”

Finally, and in case the question is raised, neither K.S.A. 8-116a nor K.S.A. 28-175 was amended during the 2012 session of the legislature.

We hope that all of this is helpful.

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Question: I have an issue with the County. They are citing AGO 2010-14 (see attached) in paying the salary of a temporary person in the Register of Deeds office out the ROD-Technology Fund. Their position is that if the work performed by the temp is eventually stored electronically, their salary can be paid out of this fund.

I cannot think of many duties in which the end product does not get stored electronically (even the bank reconciliation is done in Quicken). Any thoughts? Thanks again!

Answer: Good morning. We recall the AGO and the conclusion reached. Thank you for sending it along with your note. As to use of the fees generated K.S.A. 28-115a(c) provides:

Moneys in the register of deeds technology fund shall be used by the register of deeds to acquire equipment and technological services for the storing, recording, archiving, retrieving, maintaining and handling of data recorded or stored in the office of the register of deeds.

It appears to us that the legislative intent was for purchase of hardware/software and related services associated with storing, recording, and handling of office data, as opposed to paying the salary of office employees performing data entry work. However, the AG reads the statutory language somewhat broader than us and finds that it authorizes “technological services” by office staff so long as the work performed involves “storing, recording, archiving, retrieving, maintaining, and handling of data recorded or stored in the office,” and insofar as a “reasonable nexus exists between the work performed and the expenditure made.”

In a nutshell, and as you correctly point out, we’re not quite sure where you draw the line with salaries so long as the employee is performing work that fits within what is broadly described above. In the absence of clear evidence that the employee’s work does not involve the above, your best bet might be to find that the expenditures fall within statutory parameters.

We hope that this helps.

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Question: Per KSA 72-6760 schools are required to solicit bids on bus purchases. My question, if the buses are purchased with a lease purchase and the bank/financing company is technically the purchaser, does this statute apply? Thanks

Answer: Good morning. We also discussed this issue with the Kansas State Department of Education, since K.S.A. 72-6760 is their statute, and the collective answer is as follows:

- 1) If this is just a lease of the buses (with no purchase), then the provisions of K.S.A. 72-6760 would not apply.
- 2) However, if this is a lease-purchase, then both offices are of the opinion that the provisions of K.S.A. 72-6760 would need to be followed.

Hope this response addresses your question.

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