

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS

The meeting was called to order by REPRESENTATIVE HAROLD P. DYCK at
Chairperson

3:30 xx/p.m. on March 13, 1984 in room 527-S of the Capitol.

All members were present except: Rep. Kenneth King, excused

Committee staff present: Bill Wolff, Legislative Research
Bruce Kinser, Revisor's Office
Virginia Conard, committee secretary

Conferees appearing before the committee: James S. Maag, Director of Research, Kansas Bankers Assoc.
James R Turner, President, Kansas League of Savings Inst's
Marvin Umholtz, Vice President of Credit Development
for the Kansas Credit Union League
Julia L. Young, General Counsel, Kansas Banking Department

Chairman Dyck opened the meeting and called the committee's attention to the fact that there would not be a committee meeting this Thursday and that they would try to handle the Senate bills today and a week from today. He pointed out that the Committee has four Senate bills today and will have four Senate bills next Tuesday and that he had been assured today that SB560 would go to the Insurance Committee. Chairman Dyck also stated that he would entertain motions today on the Senate bills which the Committee would be hearing today, if the Committee so desired to take action on these bills today following the testimonies.

The first conferee was Mr. Maag, who spoke in support of SB523. (See Attachment I for his testimony.) He also introduced Harold Stones who spoke to the committee about the background of the electronic funds transfer (EFT) technology and the future he believes this technology will have.

Second conferee Jim Turner testified in support of SB590. (See Attachment II) Marvin Umholtz then testified in support of SB559. (See Attachment III.) The fourth and last conferee was Miss Young who testified in favor of SB525. (See Attachment IV)

Rep. Ken Francisco made a conceptual motion to amend HB2909 into SB523. Rep. David Miller seconded the motion (after a short briefing by Dr. Wolff on HB2909.) Motion carried.

Rep. Ed Rogers moved that SB523 as amended be passed out favorably. Rep. Bob Ott seconded the motion. Motion carried.

Rep. David Louis moved that SB590 be passed out favorably. Rep. Ivan Sand seconded the motion. Motion carried.

Rep. Dorothy Nichols moved, with Rep. Susan Rosenbaugh seconding, that SB559 be passed out favorably.

Following several questions which had arisen relative to a proposed amendment in the bill, Chairman Dyck introduced John Rucker, Credit Union Administrator, who stated that he wholeheartedly supports SB559 and he recommended that the bill be passed as presented. Rep. Ken Francisco expressed to Mr. Rucker his concern that in Mr. Rucker's approving of any bylaws provisions that adequate notice to each member had been provided. Mr. Rucker stated that he would give this serious consideration.

The motion to pass out favorably SB559 passed.

Rep. Larry Wilbert moved that SB525 be passed out of committee favorably. Rep. George Teagarden seconded the motion. Motion carried.

The meeting adjourned at 4:45 p.m.

The next meeting will be Tuesday, March 20, 1984.

**HOUSE COMMITTEE ON
COMMERCIAL AND FINANCIAL
INSTITUTIONS**

TESTIMONY ON SB 523

**BY
KANSAS BANKERS ASSOCIATION**

MARCH 13, 1984

*Atch. I
3/13/84*



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 13, 1984

TO: House Committee on Commercial and Financial Institutions

RE: SB 523--Interstate use of Remote Service Units

Mr. Chairman and members of the of committee:

We appear before you today in support of SB 523. Since the early 1970's the Kansas legislature has take a very positive approach to the issue of allowing financial institutions in Kansas to establish Remote Service Units. By granting banks the authority to determine the location of their RSUs on an intrastate basis, it has enabled Kansas banks to provide a much needed service to the citizens of our very mobile society.

The use of RSUs by financial institutions has increased substantially since 1975. A survey done by Research Associates in conjunction with Wichita State University in January, 1983, revealed that 126 financial institutions are currently participating in an ATM (Automatic Teller Machine) network. Another 171 indicated they are interested in joining a system in the near future. The survey also indicated there are currently over 200 ATMs installed statewide and the number of ATM transactions now exceed 10 million on a yearly basis. It is estimated there are currently in excess of 600,000 cards presently issued, counting both debit and credit cards.

Committee members will recall that in 1975 the Kansas legislature authorized state or national banks, having their principal offices in this state, to individually or jointly provide transactions by means of remote service units (RSUs) located anywhere in the state. There is by statute no limitation as to the number of such units which may be provided by a Kansas bank and utilized to engage in banking transactions. There are limitations expressed, however, that the banks engaging in banking transaction by means of such units must have their principal offices located within Kansas and the RSUs must be located within the state.

With the rapid advances in electronic funds transfer (EFT) technology it is now possible for bank customers to not only access remote service units within the state of Kansas, but to also access such units in other states throughout the country by means of recently established regional and national networks. For instance, many Kansas banks are now part of the PLUS System which provides access for the banks' customers to nearly 2,200 ATMs on a nationwide basis. However, the Attorney General in Opinion 83-100 issued on June 29, 1983 at the request of the State Bank Commissioner, stated there is currently no statutory authority for Kansas banks to enter into

contracts with state or national banks located in other states for the use of remote service units in those states.

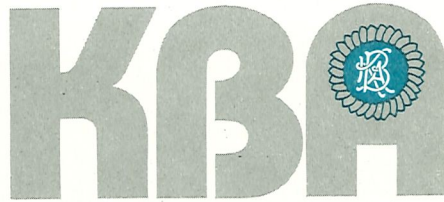
In 1982, the Kansas legislature did pass legislation allowing savings and loan associations to contract with other such associations for their operation of remote service units in Kansas or in other states. As the Attorney General pointed out in his opinion "it is clear that the legislature, when it desires to do so, is capable of opening the door for out-of-state financial institutions to operate remote service units in Kansas." That same law, of course, authorizes Kansas S&Ls to contract for the use of RSUs in reciprocating states.

The provisions of SB 523 speak to the granting of authority for Kansas banks to engage in banking transactions by means of remote service units wherever located. Quite obviously the decision as to whether a Kansas bank can access and use RSUs in other states is a determination which can be made only by the state legislatures of those respective states. Thus, the impact of this legislation is simply to grant Kansas banks the authority to enter into contractual agreements for the use of RSUs on an interstate basis if so allows by the law in those states.

Because of the rapid advances in technology, we would hope that as the committee considers this bill that they keep in mind the need for flexibility in RSU legislation and, thus, allow financial institutions to adapt quickly to the rapid technological changes without encountering statutory delays.

Again, we commend the legislature their enlightened viewpoint on RSU legislation and we sincerely hope that the committee will give favorable consideration SB 523.

James S. Maag
Director of Research



The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 13, 1984

TO: House Committee on Commercial & Financial Institutions

FROM: Harold Stones, Executive Vice President
Kansas Bankers Association

RE: Senate Bill 523

Thank you for the opportunity to present this summary of a brief historical overview of Electronic Funds Transfer Systems in Kansas.

In 1975, the Kansas Legislature enacted an amendment to K.S.A. 9-1111 which authorized the establishment of remote service units for Kansas banks. The nine-year history has proved the effectiveness of the legislation, and the Kansas Legislature is to be commended for it.

The evolvement of EFTS legislation has never been a controversial issue among Kansas bankers. In Kansas, the banking industry does not believe that EFTS legislation has any structural overtones, for the following reasons:

EFTS legislation does not give any bank any new powers --- only a new and modern tool for accomplishing the same powers which are already in existence. For example:

- (a) Checks can be written outside the bank in any grocery store. An electronic device allows the same thing faster and more convenient.
- (b) Deposits can be made outside the bank from any post office. An electronic device is more rapid and more convenient.
- (c) Transfers from account to account can be effected outside the bank by telephone or letter. An electronic impulse is, again, faster and more convenient for the customer.

The deregulation of banking which is occurring at the federal level, is creating an unprecedented number of non-regulated financial institutions offering competitive banking services. American Express, for example, has automated teller machines which dispense traveler's checks, and can be accessed by a plastic card in major airports all over the United States.

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March 13, 1984
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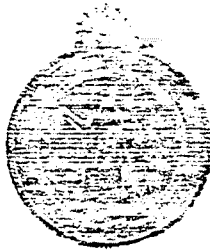
Sears, K-Mart, Kroger's (parent corporation of Dillon's), Prudential-Bache, Merrill Lynch, etc. are all now offering banking depository and checking services which will soon be on a national scale. It is imperative that Kansas community banks be given the opportunity to join regional interstate ATM networks so their customers can have the same convenience as the customers of non-banks.

Smaller community banks in Kansas may also realize an opportunity which EFTS brings them in attempting to retain customers. Even though the customer may move away from the community, the continuation of a plastic debit card in the customer's possession and the bank's membership in an interstate or regional network could retain that customer's banking relationship.

It is for all the above reasons that we believe Kansas bank consumers will expect their community banks to provide the services which electronic banking offers.

We respectfully ask for your support of SB 523.

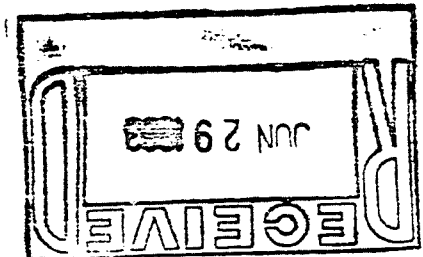
HAROLD A. STONES
Executive Vice President



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612



ROBERT T. STEPHAN
ATTORNEY GENERAL

June 29, 1983

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST 296-5299

ATTORNEY GENERAL OPINION NO. 83- 100

John O'Leary, Jr.
State Bank Commissioner
700 Jackson, Suite 300
Topeka, Kansas 66603

Re: Banks and Banking -- Banking Code; Powers -- Branch
Banking Prohibition; Interstate Contract for Use
of Remote Service Units

Synopsis: K.S.A. 9-1111(f) provides that any state bank or national banking association located in Kansas may operate remote service units, by means of which banking transactions may take place. Such facilities may be located anywhere within the state, including at the place of business specified in the bank's certificate of authority. Any state bank or national banking association located in Kansas may enter into agreements with any other banks having their principal place of business in this state for the joint operation of such facilities. In the absence of statutory authority, however, Kansas banks may not enter into such contracts with state or national banks located in other states. Cited herein: K.S.A. 9-1111, K.S.A. 1982 Supp. 17-5565, 12 U.S.C. §36.

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Dear Commissioner O'Leary:

As Bank Commissioner for the State of Kansas, you have requested the opinion of this office on a matter concerning the operation of remote service units, as that term is used in K.S.A. 9-1111. This statute, the so-called branch banking statute, allows a state or national bank to operate remote service units in this state, and does not consider such units to be branches, the operation of which is prohibited.

John O'Leary, Jr.
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Your inquiry stems from a situation involving a Kansas state bank and a national bank located in Missouri, and raises the question of whether two banks so situated may jointly operate remote service units.

Prior to examining the legal issues involved, a brief summary of the facts set out in your letter and the accompanying materials would be helpful. United Missouri Bank of Kansas City, N.A., (UMB) is a national banking association organized and doing business in Kansas City, Missouri. Almost 100% of its stock is owned by United Missouri Bancshares, a Missouri bank holding company that also owns a controlling interest in 19 other Missouri banking corporations. UMB has obtained the right to use the name "Ultra" in connection with automatic teller machines and the encoded plastic cards used to activate such machines. It has entered into contracts with 7 other banks in the Kansas City metropolitan area whereby the banks, referred to as correspondent banks, may use the Ultra name in connection with automatic teller machines located on their premises. While 5 of the 7 banks are controlled by United Missouri Bancshares, one of the others is a Kansas bank located in Overland Park, Kansas. The contracts have resulted in a network of automatic teller machines operating at 15 locations, each of which is tied in to the central computer at UMB. Each correspondent bank either owns or leases the machines located on its premises.

As part of the contract, the correspondent bank permits customers of UMB, as well as all other banks who have signed contracts with UMB, to have access to its Ultra machine. The Ultra card activates the machine, and allows the customer to perform six different transactions: withdrawal of cash from a checking account; transfer of money from a checking account to a savings account; transfer of money from a savings account to a checking account; withdrawal of cash from a MasterCard line of credit; transfer of money from a MasterCard line of credit to a checking account; and inquiries concerning account balances. Therefore, a UMB customer with an Ultra card may enter into any of the above transactions at any of the 15 locations, including those in Kansas. Likewise, a customer of the Overland Park bank may use both the Kansas and Missouri machines for his or her banking transactions. Each transaction is reflected in the computer record at UMB, and the changed balance in a customer's account will subsequently show in all 15 of the outlets.

The legal question presented by this fact situation concerns the authority of the Overland Park bank to enter into such an agreement with a bank in another state. The fact that UMB is a national association is not determinative, for in questions regarding branch banking, state law controls when, where,

and how a national bank may branch, if indeed it may do so at all. State ex rel. Edwards v. Heimann, 633 F.2d 886 (9th Cir. 1980), applying 12 U.S.C. §36. Accordingly, reference must be had to the applicable provision of the Kansas Banking Code, specifically, K.S.A. 9-1111. We further note that, in the interest of maintaining competitive equality between state and national banks [First National Bank v. Walker Bank & Trust Co., 385 U.S. 252, 17 L.Ed.2d 343 (1966)], remote service units have been held by federal courts to constitute branch banks. State of Colorado v. First National Bank of Fort Collins, 540 F.2d 497 (10th Cir. 1976), and cases cited at 499.

Initially, K.S.A. 9-1111 contains a general prohibition against establishment of any branch bank, office, agency or place of business by a bank doing business in this state. Three exceptions are then made to this general prohibition, e.g. for attached auxiliary teller facilities, detached auxiliary banking service facilities, and remote service units. Remote service units are defined at K.S.A. 9-1111(h) to mean the following:

"an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank. The term shall include 'online' computer terminals and 'offline' automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines . . ."

From the above, there can be no question that the automatic teller machines described above fall within the class of remote service units for purposes of Kansas law.

Authorization for operation of remote service units is contained in subsection (f) of the statute, which states:

"any state bank or national banking association having its principal office and main banking house in this state, individually or jointly with one or more state banks or national banking associations having their principal offices and main banking houses in this state, may provide, and engage in banking transactions by means of remote service units located anywhere within the state of

John O'Leary, Jr.
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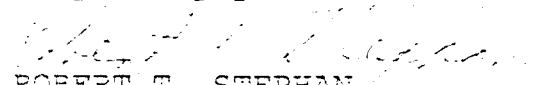
Kansas, which remote service units shall not be considered to be branch banks, or branch offices, agencies or places of business, or detached auxiliary services facilities authorized herein. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;" (Emphasis added.)

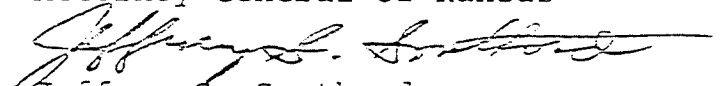
It is important to note that while the subsection allows the joint operation of remote service units by two or more state or national banks, the grant of authority is explicitly limited to those banks "having their principal offices and main banking houses in this state." While subsection (g) permits the type of unit sharing which was described above, i.e., a bank with a remote service unit must allow customers of another bank to use the facility, subsection (f) controls the type of agreements which can be made initially for the joint operation of such facilities, and is silent as to the type of agreement entered into in the above scenario.

Also relevant is the recent action of the 1982 Kansas Legislature in amending K.S.A. 17-5565. L. 1982, ch. 106. As amended, this statute now allows savings and loan associations to contract with other such associations for the operation of remote service units in Kansas or in other states. There is no requirement that all of the associations have their principal place of business in this state, for indeed the statute expressly permits "foreign" savings and loan associations to operate such units in Kansas, provided that reciprocal privileges are afforded to Kansas associations in the other state. Accordingly, it is clear that the legislature, when it desires to do so, is capable of opening the door for out-of-state financial institutions to operate remote service units in Kansas. To date, it has not seen fit to amend K.S.A. 9-1111 in the Banking Code in the same way as K.S.A. 1982 Supp. 17-5565 of the Savings and Loan Code, and we are not prepared to read into the former statute by implication what the legislature has declined to put there expressly.

Therefore, in our opinion a Kansas bank is without authority to enter into an agreement for the joint operation of remote service units, such as automatic teller machines, with another bank which does not have its principal place of business located in this state.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Jeffrey S. Southard
Assistant Attorney General

By Paul Schmeltzer

*Vice President and Marketing Director
Financial Card Services Division
Bank One
Columbus, Ohio*

The ATM networks are certainly at the forefront of change in the financial services industry. But are they doing a good job of leading the industry into the new deregulated world? What role should they assume in this new world?

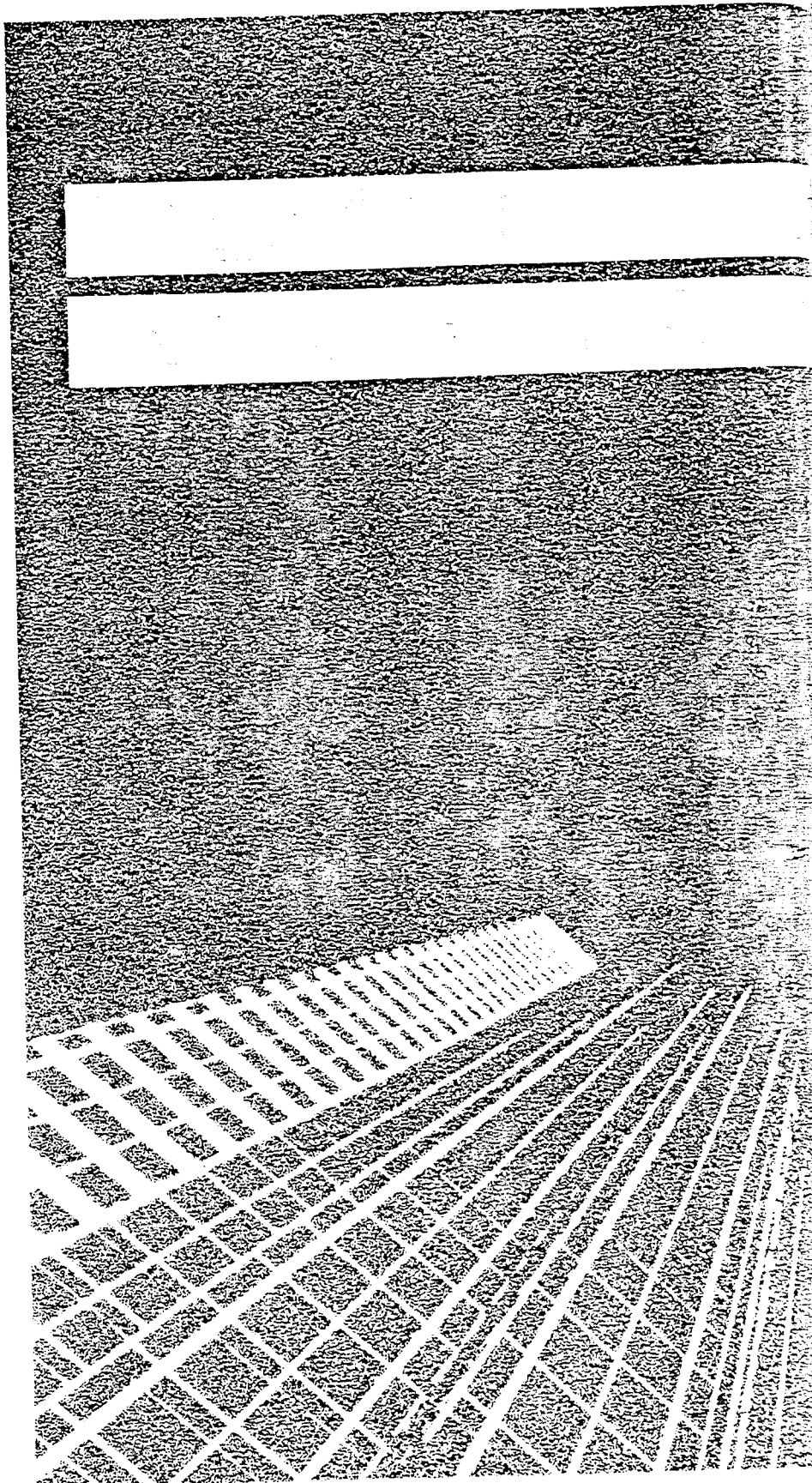
Network Reflections

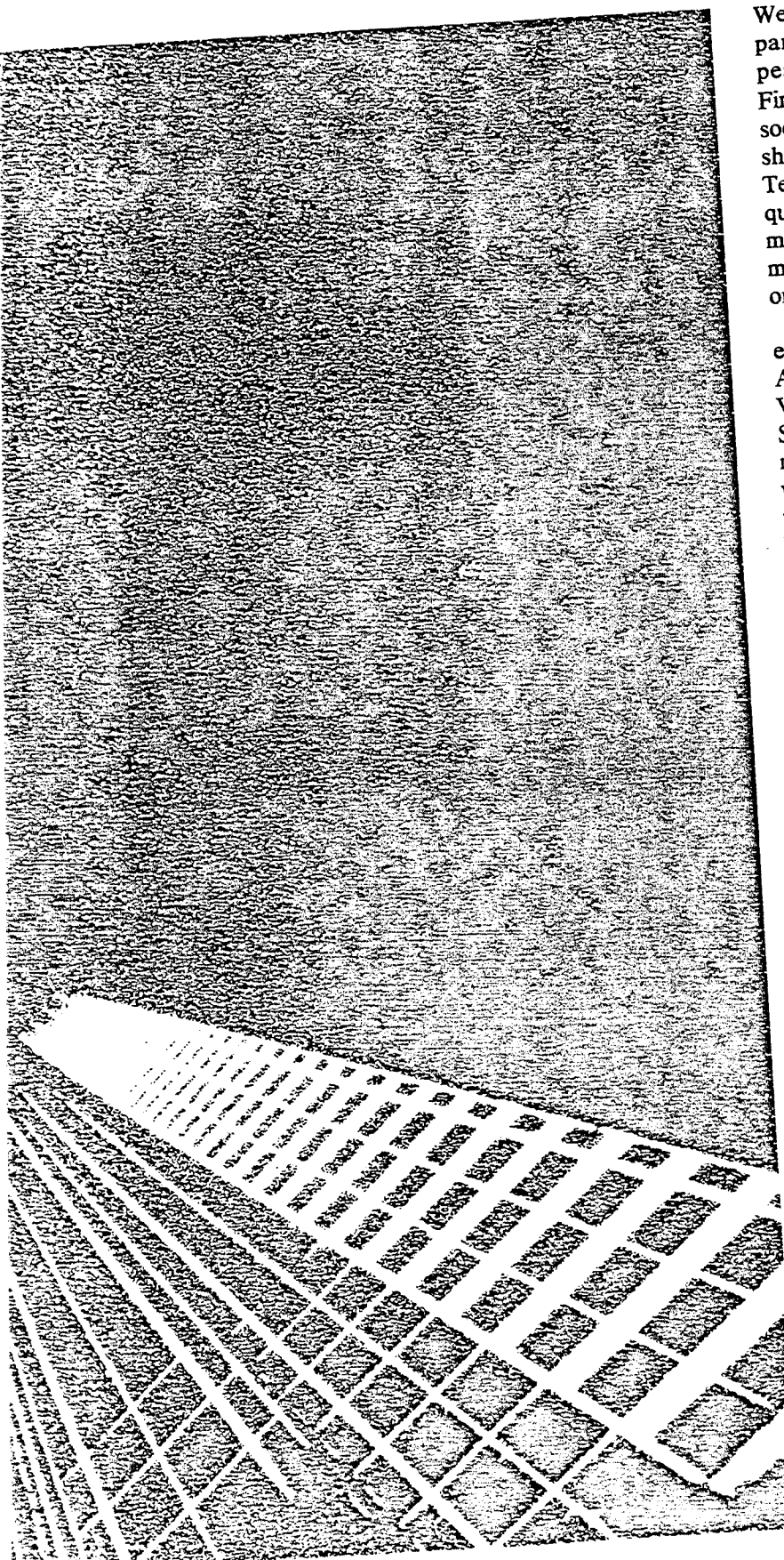
Year's end is a time for reflection on events just passed and events yet to come. As the financial services industry closes out 1983, reflection on the network chapter just written and the chapters ahead seems appropriate.

The concepts of shared ATMs and EFT interchange gained real acceptance in 1982. There was a rush to pick partners, a rush to stake out territorial claims. In many respects 1983 has been a year of implementation. It has also been a year of significant events—events that are important not only for the networks themselves, but for the world of financial services. Consider these examples:

■ In 1983, Plus, Cirrus and recently Nationet came out of the boardroom and into the marketplace. Their accomplishments are the product of a great deal of hard work by some real leaders in the banking industry. Congratulations are certainly in order. But so is moderation if we consider the rest of this year's events and the work that remains in the years ahead.

■ Competition continued strong among the regional networks as the successful continued to grow and others paused to reflect. Two years ago I characterized Texas as a "John Wayne shoot-out!" Pulse and MPACT have fought it out in the best traditions of the Old





West—that is until the Justice Department decided to step in as peacemaker. Justice supported First Texas Savings and Loan Association's bid for "dual" membership in MPACT and Pulse. First Texas wasted no time in calling into question any policy of exclusive membership. The eventual result may be plurality—just like duality, only bigger.

■ In another pair of bellwether events, ADP acquired the Easy Answer network in Illinois, and Visa acquired the Maryland Switch. I believe 1984 will see more of this consolidation as networks founded more on emotion than the economics of a rigorous business case acknowledge the financial consequences of continued independent operation. Visa's step is doubly significant as a milestone in its process of transition from a card business to a network business.

■ POS will be a network business. California's big five banks have acknowledged that fact in their recently announced POS project. While Bank of America, Crocker, First Interstate, Security Pacific and Wells Fargo all have strong proprietary stakes in their ATM networks, POS will be a different ball game.

■ The third-party players have also been busy in 1983. J.C. Penney made major moves in the network market, signing Shell and Gulf for POS services and acquiring First Bank System's home banking technology. And, most recently, Exxon announced plans to issue its own debit card.

Not to be outdone, Sears is expanding its network of financial centers and plans to have 250 nationwide by year-end 1984 and over 600 by 1986. In addition, Mr. Telling is rolling out his shopping cart nationwide with banks and S&L's on his list. One wonders what networks he may buy into in the process.

The new entrants are big and visible, but more impressive may be the subtle, structural variety of the market. Consider Citicorp's interface to Safeway's ATM network; Honor's move to surround Publix; and Matrix, the Manufacturer's Hanover/NCR joint venture. Remarkable bedfellows indeed!

New World Reflections

It is now clear that the financial services market is a much broader market today than that served by traditional financial institutions only a few years ago. Insurance companies own brokers. Brokers own banks. Banks broker securities and insurance. All across the country financial institutions and financial service corporations are going around wearing each other's clothes.

We are, in fact, witnessing fundamental, structural change in the payment system and the financial services industry. A new world of financial services is emerging today, a world crafted by colliding forces of change. Deep-seated forces that are, perhaps for the first time, largely beyond our control. These forces include shifting markets, changing competitive roles and the accelerated revolution in technology.

The mass markets of an industrial age are giving way to markets segmented by the communications and technology of an information age. Insights offered by works such as Alvin Toffler's *Third Wave* and John Naisbitt's *Megatrends* are fundamental to an understanding of customers' changing values and the market niches which financial services providers will occupy.

Competitive roles are changing as the medium of financial exchange shifts from documents to electronic image and impulse. That shift is removing the traditional entry barriers to nonbank operation of the payment system. In short,

anyone with a computer, including your customer and mine, is more able to participate. Banking's exclusive franchise on the payment system is crumbling. It is indeed a new world. A world of financial automation.

The essential financial service will survive, of course. The essential financial service is the secure store and convenient exchange of value. In the new world, that value is information—information that represents the deposits we will compete for. And we will compete with a myriad of services and competitive options, services that go beyond checking and savings, services beyond ATMs and POS—services such as financial planning, central asset accounts, equity based credit, private-sector ACH, check truncation, cash management services, investment services and home information.

Technology is in fact changing our concepts of product development and service delivery. Did the consumer demand ATM services? No. We invented technology and created a market with it. As Dr. Alan Lipis, founder of Electronic Banking, Inc., said in a recent speech, quoting Marshall McLuhan, "The medium is the message."

The new world of financial services is a world "belonging to the medium of technology." Divide that world into two hemispheres, data base and data delivery. Data base is the repository for financial information, our electronic deposits. Data delivery is the communications hemisphere. It is terminal and network based access to the data base.

Today, ATM networks are the embryonic foundation for our data delivery systems. Data delivery

systems are a key component of banking's ability to compete in a world where new markets, new products, new competition and new technology are the order of the day.

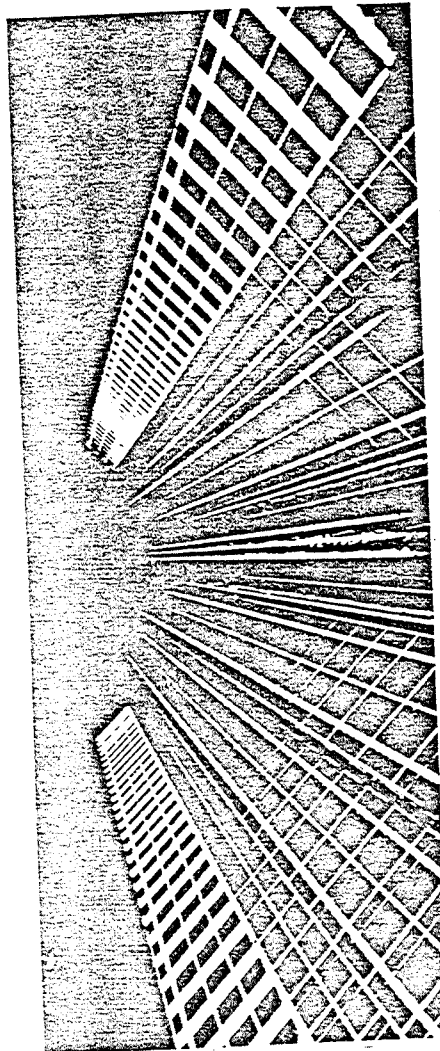
Leadership Reflections

The ATM networks are providing significant influences on the shape of the industry's new order. Much has already been accomplished, yet a great deal remains to be done. Most accomplishment to date has focused on the technical and operational requirements for establishing electronic payment systems.

Technical communications standards such as the American National Standards Institute's X9.2 Standard are gradually gaining acceptance in all the major networks. The networks have begun to address requirements for network security. National Automated Clearing House Association formats are becoming *de facto* standards for batch oriented data transfer. The networks are clearly earning high marks for their technical leadership.

The process of technical leadership must continue. Significant problems still remain. Communications cost is becoming a major problem across the industry. The break-up of AT&T has launched a transition from regulated monopoly to unregulated monopoly. Communications services will remain monopolistic in price and quality until viable competitive alternatives exist. Opportunities for technical leadership will remain for some time.

The network role in shaping the new world can and should be broader than just technology. There are a number of additional areas where industry leadership could be provided by the networks. These include regulatory issues, product direction and financial performance.



Network growth and banking's ability to compete in the new world are constrained by the absence of a coherent national policy for interstate deployment of EFT services. Today this condition works to the advantage of everyone except bankers. If, as an industry, banking continues to pick its way through the current maze while simultaneously attempting to protect our turf, it will only forfeit an even larger share of its payment system franchise to unregulated competitors. To date the networks have been a little-heard voice on these issues.

Product direction is critical to a network oriented evaluation of the payment system. Beyond ATMs, a

myriad of network services are possible in the years ahead. The number that actually become reality, however, will be determined largely by the winners in the next round of competition.

ATM interchange is only a positioning stage for the electronic transformation of the payment system at the point of sale. For some of us it has been a long time coming, but the time has come. The card base is there. The merchant is ready. The network foundations are being laid in place, but the issue of banking's leadership role in the emerging payment system remains in doubt. Third-party networks and retailer issued debit cards are a reality that cannot be ignored. Aggressive leadership is needed.

Finally network profitability is an area of concern. If the networks are to be viable businesses in the long run, they must become profitable. Today I suspect most networks, particularly the smaller ones, are not profitable. Merger or acquisition may provide the answer for some, but for most, aggressive management and realistic pricing are an imperative.

Toward A New World

The new world is a product of deep-seated forces of change. It implies a new culture, a culture more in touch with its markets than ever before. It will be a world that rewards the right product, in the right place, at the right time. The ATM networks are in the right place at the right time. It is time to press that advantage. It is time to lead.

Clearly these are turbulent times in the financial service industries. Change is always turbulent. But we are, in a very real sense, giving birth to a change of great dimension, a new culture. Would-be survivors in the new order, including the ATM networks, must recognize that change and adapt. ■

KLSI Kansas
League of
Savings
Institutions

JAMES R. TURNER, President • Suite 612 • 700 Kansas Ave. • Topeka, KS 66603 • 913/232-8215

March 13, 1984

TO: HOUSE COMMERCIAL AND FINANCIAL INSTITUTIONS COMMITTEE
FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS
RE: S.B. 590, REMOTE SERVICE UNITS

The Kansas League of Savings Institutions appreciates the opportunity to appear before the committee in support of S.B. 590 which would expand the availability and utilization of remote service units by savings and loan associations. The proposal is a companion bill to S.B. 523, introduced by the Kansas Bankers Association, which we also support.

The bill was amended by the Senate Committee, at the request of the League, so as to bring the language of S.B. 590 into conformity with S.B. 523. Also, for the Committee's convenience we have enclosed FHLBB regulations relating to the deployment of remote service units (RSUs) by Federal associations.

We would ask the committee's consideration of reporting S.B. 590 and S.B. 523 favorably for passage.

James R. Turner
President

JRT:bw

Encl.

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only for the processing and transmission of permissible data. An association providing such services under this section shall comply with the anti-tying provisions of 12 U.S.C. 1464(q) (Pub. L. 97-320, § 331, 96 Stat. 1469, 1503 (1982)).

(f) An association may participate with others in establishing or maintaining a data processing office: *Provided*, That the association may participate in establishing or maintaining a data processing office controlled by an entity not subject to examination by a Federal agency regulating financial institutions only if such entity has agreed in writing with the Board that it will permit and pay for such examination of the office as the Board deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the office.

§§ 545.139 and 545.140 [Reserved]

§ 545.141 Remote Service Units (RSUs).

(a) *Definitions*. As used in this section—

(1) "Generic data" means statistical information which does not identify any individual accountholder.

(2) "Personal security identifier" (PSI) means any word, number, or other security identifier essential for an accountholder to gain access to an account.

(3) "Remote service unit" (RSU) means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a Federal association that, for activation and account access, requires use of a machine-readable instrument and PSI in the possession and control of an accountholder, is an RSU. The term includes, without limitation, point-of-sale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a Federal association, unless shared with other financial institutions. An RSU is not a branch,

satellite, or other type of facility or agency of a Federal association under § 545.92 *et seq.* of this Part.

(4) "RSU account" means a savings or loan account or demand account that may be accessed through use of an RSU.

(b) *General*. Subject to the requirements of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205.2), a Federal association may establish or use RSUs and participate with others in RSU operations, on an unrestricted geographic basis. No RSU may be used to open a savings account, a demand account or establish a loan account.

(c) *RSU access techniques*. A Federal association shall provide a PSI to each accountholder and require its use when accessing an RSU; it may not employ RSU access techniques that require the accountholder to disclose a PSI to another person. The association must inform each accountholder that the PSI is for security purposes and shall not be disclosed to third parties. Any device used to activate an RSU shall bear the words "Not transferable" or their equivalent. A passbook may not be such a device.

(d) *Privacy of account data*. A Federal association shall allow accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal association may disclose account data to third parties, other than the Board or its representatives, unless express written consent of the accountholder is given, or applicable law requires. Information disclosed to the Board will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552a. A Federal association may operate an RSU according to an agreement with a third party or share computer systems, communications facilities, or services of another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal association.

(e) *Security*. A Federal association shall protect electronic data against fraudulent alterations or disclosure. All RSUs shall meet the minimum security

devices requirements of Part 563a of this Chapter as though such units were offices, as defined in § 563a.1 of said Part, except to the extent that an association satisfies the Board's Supervisory Agent that those requirements are inappropriate. In such a case, alternative measures satisfactory to the Board's Supervisory Agent must be taken for installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, larcenies, and computer theft and to assist in identification and apprehension of persons who commit such acts.

(f) *Board supervision.* A Federal association may share an RSU controlled by an institution or another party not subject to examination by a Federal regulatory agency only if such institution or other party has agreed in writing that the RSU is subject to such examination by the Board as it deems necessary.

§ 545.142 Home banking services.

A Federal association may utilize any electronic technology to provide its customers with home banking services. Any such services provided under this section are subject to the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and Regulation E of the Federal Reserve Board (12 CFR 205) (as construed by Supplement II—Official Staff Interpretation, 2-23). "Home banking services" means the transfer of funds or financial information, or the performance of other transactions initiated by a customer by means of an electronic home terminal, such as a telephone, a home computer terminal, or a television set that is linked to an association's computer by telephone or cable television lines. An association providing services authorized by this section shall adopt security measures adequate to prevent unauthorized access to its records or those of its customers or the use of a home terminal to defraud the association or any of its customers.

Appendix

Notice to Housing Creditors Regarding Alternative Mortgage Transactions.

Pursuant to Title VIII, Pub. L. 97-320, housing creditors that are not commercial banks, credit unions, or Federal associations may make alternative mortgage transactions (as defined by Section 803 of Pub. L. 97-320 and as further defined and described by applicable regulations identified herein) notwithstanding any state constitution, law or regulation. In accordance with Section 807(b) of Pub. L. 97-320, the provisions listed below are identified as appropriate and applicable to the exercise of this authority, and all regulations not identified herein are deemed inappropriate and inapplicable: §§ 545.33 (c), (e), and (f) (4)-(11).

PART 546—MERGER, DISSOLUTION, REORGANIZATION AND CONVERSION

§ 546.1 Definitions.

As used in §§ 546.2 and 546.3—

(a) "Association" means a Federal association, or interim Federal association, a savings bank, and any building and loan, savings and loan, or homestead association, or cooperative bank, or interim state institution organized under the laws of any State which may, under those laws, merge or consolidate with a Federal association:

(b) "Merging association" means an association absorbed by merger; and

(c) "Resulting association" means the association whose corporate existence continues after absorbing a merging association.

§ 546.2 Procedure; effective date.

(a)(1) A Federal association insured by the Federal Savings and Loan Insurance Corporation and one or more other associations so insured may merge as prescribed in this Part if, as to any association which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized.

(2) A Federal association insured by the Federal Deposit Insurance Corporation and any one or more other Federal associations so insured may merge as prescribed in this Part.

(3) A Federal association insured by the Federal Deposit Insurance Corporation and any one or more other

TESTIMONY ON S.B. 559, As Amended

Presented to the
HOUSE COMMITTEE ON
COMMERCIAL AND FINANCIAL INSTITUTIONS

March 13, 1984
by the

KANSAS CREDIT UNION LEAGUE

Mr. Chairman, members of the Committee:

I am Marvin Umholtz, Vice President of Credit Union Development for the Kansas Credit Union League. I appreciate having the opportunity to appear before the Committee to speak in support of S.B. 559, as amended by the Senate Committee. The bill amends two sections of the Kansas Credit Union Act.

The proposed amendments to both sections are designed to place in the Kansas Credit Union Act certain authorities currently provided to Federal Credit Unions in the federal law. The amendments are:

- Section 1. Amend K.S.A. 1983 Supp. 17-2204: to allow a credit union to receive payments on shares, share certificates and other accounts from the National Credit Union Central Liquidity Facility (CLF) and to invest in the capital stock of the CLF.
- Section 2. Amend K.S.A. 1983 Supp. 17-2228: to streamline the credit union merger procedure by establishing a more reasonable membership vote participation requirement. This amendment will serve the additional purpose of removing interpretation questions inherent in the existing language.

CENTRAL LIQUIDITY FACILITY AMENDMENT

The CLF is operated by the National Credit Union Administration (NCUA) which regulates federally chartered credit unions and administers the federal share insurance program. The CLF serves as the liquidity lending tool of the NCUA and supports its other functions (examining and insuring credit unions). The CLF's objective is to facilitate a stable credit union system by providing a source of funds to assist a credit union in dealing with demands on its liquidity and for stabilization assistance in special circumstances.

Atch. III
3/13/84

At the request of KCUL and its member credit unions last October, the CU Administrator and the CU Council approved a "special order" authority pursuant to K.S.A. 1983 Supp. 17-2244. This is the statute which allows the CU Administrator to grant "federal conformity authorities" to state-chartered credit unions. (See Attachment 1.) The request was made to ensure equity between state and federal charters if the need arose prior to the Legislative Session.

Although KCUL believes that state credit unions have authority under the existing law's "incidental powers" section (See page 3 of the bill, starting on line 0092). We have included this specific authorization language found in new subsection (13) starting on line 0097, (page 3), to codify this conformity provision consistent with our past practice.

The CU Administrator and Council indicated that specific statutory language is desirable for this important relationship with the CLF and the National Credit Union Administration and we concur.

Please be advised that in requesting new subsection (13), KCUL requested the language found in subsection (c) on line 0102. This does not appear in the federal language. This is anticipatory language designed to preclude the need for future amendments which might be required if the CLF changes its investment authorities and practices.

CU MERGER VOTE PARTICIPATION CLARIFIER

The amendment found in Section 2 of the bill on line 0114, page 3, is designed to remove a statutory interpretation problem identified by representatives of several of our member credit unions.

Some questions have been raised concerning the interpretation of K.S.A. 1983 Supp. 17-2228, the Kansas CU Act merger statute, last amended in 1982 (L. 1982, ch. 102, sec. 8). The statute can be interpreted to mean that when a membership vote on a merger plan (whether by written mail ballot or in person at a meeting) is held, the voting results are valid if at least 10% of the mem-

bers participate in the vote, or it can be interpreted to mean that 10% participation is required for an in-person meeting, but that a full majority of the total membership must approve the merger if a mail ballot vote is used.

The confusion exists because of the modifying sentence found on line 0115 which is stricken in this bill. When read together with (starting on line 0113) "...or by the affirmative vote in writing of a majority...", a dilemma is created. After all, a majority is "...at least 10%...". This did not appear to be the intent of the House Commercial and Financial Institutions Committee in 1982 when it added this amendment to 1982 H.B. 2753, a ten section measure designed to modernize portions of the Kansas CU Act. (See Attachment 2).

While the interpretation problem identified above first focused our attention on this statute, the amendment in S.B. 559 takes an additional step. It brings the state law's membership voting participation requirement in line with the requirement governing federal credit unions. 12 C.F.R. 708.7 (b) reads:

"(b) The merger proposal of a merging Federal credit union must be approved by affirmative vote of a majority of the members of the credit union who vote on the proposal."

Credit union mergers involve the following steps:

1. Merger plan agreed upon by majority of the board of directors of each credit union.
2. Merger plan must be approved by the CU Administrator of the Kansas State Department of Credit Unions.
3. Notice of CU membership vote on the merger plan given to members of each CU.
4. Membership vote taken, in person or by mail.
5. Membership vote results documented and presented to the CU Administrator.
6. Certificate of Merger certified by CU Administrator.
7. CUs are merged under one charter.

SUMMARY

KCUL asks that this Committee act favorably on S.B. ⁵⁵⁹~~509~~ as amended by the Senate Committee. Its passage will (1) provide state-chartered credit unions with unquestioned authority to participate in the programs of the Central Liquidity

Facility, and (2) streamline the credit union merger procedure by making it clear that those members who participate in a merger plan vote are authorized to make a binding decision.

Thank you for this opportunity to appear before the Committee. I will respond to questions as directed by the Chairman.

NOTICE OF AND APPLICATION FOR PERMISSION TO
ENGAGE IN ACTIVITIES AUTHORIZED UNDER FEDERAL LAW

_____ requests that the Credit Union
(Credit Union)

Administrator grant the credit union additional powers pursuant to the provisions of K.S.A. 17-2244, as amended. It is desired to keep the present powers granted in K.S.A. 17-2204, but in addition, to add the following powers granted to federal credit unions under the Federal Credit Union Act:

12 U.S.C. 1757 Powers. — "A. . . credit union shall have . . .
power . . . —

(6) to receive . . . from the [National Credit Union *]
Central Liquidity Facility . . . payments on —

(a) shares which may be issued at varying dividend
rates;

(b) share certificates which may be issued at
varying dividend rates and maturities; . . .

(7) to invest its funds . . . (J) in the capital stock of the
National Credit Union Central Liquidity Facility . . ."

* The National Credit Union Central Liquidity Facility created by Title III
of the Federal Credit Union Act (12 U.S.C. 1795, and following).

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTION

ATTACHMENT Held in Room 527-S, at the Statehouse at 3:30 ~~xxx~~ p. m.,

#2 on Tuesday, February 16, 1982, 19

All members were present except:

Rep. Holderman, excused
Rep. Patrick, excused

Rep. Burgess, excused

The next meeting of the Committee will be held at 3:30 ~~xxx~~ p. m.,

on February 23, 1982, 19

These minutes of the meeting held on _____, 19 were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

Jim Maag, Kansas Bankers Association
Stan Lind, Kansas Association of Finance Companies
Marvin Umholtz, Kansas Credit Union League

Bruce Kinzie, Revisor's Office, staff
Bill Wolff, Legislative Research, staff
Myrta Anderson, Legislative Research, staff

The Chairman called the meeting to order. He announced that the committee will be considering proposed legislation by Jim Maag, of the Kansas Bankers Association, and Stan Lind, Kansas Association of Finance Companies, who are requesting that their proposed legislation be introduced as committee bills.

Jim Maag presented testimony (Attachment A). This proposed legislation would amend Section 1 of K.S.A. 9-1101. This amendment would allow Kansas banks to purchase stock or debentures of mortgage corporations.

Rep. Andre moved this proposed legislation be introduced as a committee bill. Rep. Goering seconded the motion and the motion carried.

Stan Lind, Kansas Association of Finance Companies presented testimony (Attachments B and C) which would be an amendment to K.S.A. 16-601, (to contain certain wording printed on the certificate), and an amendment to K.S.A. 16-608 (to delete certain wording).

Rep. Goering moved the proposed legislation be introduced as a committee bill. Rep. Meacham seconded the motion and the motion carried.

The chairman announced that HB 2753 would be brought up for discussion and possible action. Bruce Kinzie of the Revisor's Office and Marvin Umholtz, Kansas Credit Union League, have worked on the suggested revisions of the original bill and will explain the suggested amendments.

Marvin Umholtz presented several attachments and it was decided to discuss and take action on each attachment individually.

Discussion was held concerning the two new sections (d) and (e) on Page 10 relating to trust services.

CONTINUATION SHEET

Minutes of the HOUSE C&FI Committee on FEBRUARY 16, 1982

Rep. Meacham moved to amend the bill by striking lines 356 through 365, sections (d) and (e). Rep. Spaniol seconded the motion. The motion carried with Rep. Hohman voting "no".

Discussion was held on Attachment D, which includes four clean-up amendments. Amendment #1 strikes certain language on lines 0161 through 0164; Amendment #2 strikes certain language on lines 0192 through 0196; Amendment #3 strikes certain language on lines 0252 and 0253; and Amendment #4 adds language concerning dormant accounts.

Rep. Miller moved to give blanket approval to the four amendments as discussed in Attachment D. Rep. Meacham seconded the motion and the motion carried.

Attachment E is wording on a new credit union amendment or a bill introduction request, and discussion was held whether to include this as an amendment or new committee bill. This concerns the merging of one credit union with another.

Rep. Jarchow moved to adopt this as an amendment in HB 2753. Rep. Hohman seconded the motion. After discussion the motion failed on vote of five for the motion, and seven against the motion.

Rep. Hohman, on conceptual motion, moved to strike certain language in the proposed amendment, starting after the comma, (either by . . . or) Rep. Meacham seconded the motion.

More discussion ensued.

Rep. Goering, on substitute conceptual motion, moved to leave in the amended wording, but to insert additional wording to the effect that there would have to be at least 10% of the total membership of both credit unions voting at such meeting. Rep. Smith seconded the motion and the motion carried.

Discussion was held on Policy Question #1 (Attachment F). There were no changes to be made.

Discussion was held on Policy Question #2 (Attachment G). There were no changes to be made.

Rep. Jarchow moved the bill be reported favorably out of committee as amended. Rep. Acheson seconded the motion.

Discussion was held whether Attachment E should be included as an amendment to HB 2753, in which the conceptual motion of Rep. Goering would be included, or whether this should be a new bill.

Since there was to be more discussion, Rep. Jarchow withdrew his motion, with Rep. Acheson consenting.

Rep. Miller moved to strike the words "or minimum" on Page 7, Lines 247 and 248. Rep. Hohman seconded the motion and the motion carried.

Rep. Andre moved to include the amendment into HB 2753, also to insert wording in the substitute conceptual motion of Rep. Goering to include the wording "at least 10% of the total membership of each credit union required to vote". Rep. Spaniol seconded the motion. Motion carried by voice vote with Rep. Miller voting "no".

Rep. Jarchow moved HB 2753 be reported favorably as amended out of committee. Rep. Hagerman seconded the motion, and the motion carried.

The meeting was adjourned.

NEW CREDIT UNION AMENDMENT
OR BILL INTRODUCTION REQUEST

AMEND the first sentence of K.S.A. 17-2228, concerning credit union merger procedure, to read as follows:

Any credit union may, with the approval of the administrator, merge with another credit union under the charter of such other credit union, pursuant to any plan agreed upon by the majority of the board of directors of each credit union joining in the merger, and approved by the ~~affirmative-vote-of-a-majority-of-the~~ members of each such credit union, either by the affirmative vote of a majority of those members present at a meetings meeting of the its members duly called for such purpose or by the affirmative vote in writing of a majority of all of its members without a meeting.

Atch. E

Attachment IV

TESTIMONY OF: JULIA L. YOUNG, GENERAL COUNSEL
KANSAS BANKING DEPARTMENT

PRESENTED TO: THE HOUSE COMMITTEE ON COMMERCIAL
AND FINANCIAL INSTITUTIONS

MARCH 13, 1984

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

SB 525

THIS AMENDMENT IS SUBMITTED TO ELIMINATE THE
NECESSITY OF MONTHLY MEETINGS BY TRUST COMPANIES
AND TO ALIGN THIS SECTION WITH KSA 9-1116, WHICH
GOVERNS BANK DIRECTOR'S MEETINGS. A COPY OF K.S.A.
9-1116 IS ATTACHED FOR YOUR CONVENIENCE.

JLY:jas

Atch. IV
3/13/84

excess of such loan and a failure to comply with any order made hereunder shall be grounds for the hearing provided in K.S.A. 9-1805, and amendments thereto.

History: L. 1947, ch. 102, § 33; L. 1949, ch. 110, § 2; L. 1951, ch. 120, § 1; L. 1975, ch. 44, § 14; L. 1976, ch. 56, § 1; L. 1982, ch. 51, § 1; L. 1983, ch. 47, § 1; July 1.

9-1114. Board of directors of bank; number; qualifications; election; increase, when; vacancies; forfeiture of office; annual meeting. The business of any bank shall be managed and controlled by its board of directors and this shall include the authority to provide for bonus payments, in addition to ordinary compensation for any or all of its officers and employees. The board shall consist of not less than five nor more than 25 members, all of whom shall be stockholders of the bank or of the parent corporation of the bank, and who shall be elected by the stockholders at any regular annual meeting which shall be held during the first 120 days of each calendar year. If the number of directors elected is less than 25, the number of directors may be increased so long as the total number does not exceed 25 and when the number is increased the first additional directors may be elected at a special meeting of the stockholders. The directors shall be elected in the manner provided in the general corporation code. Vacancies in the board of directors may be filled in the manner provided in the general corporation code. A majority of the directors shall be residents of this state. Any director of any bank who shall become indebted to such bank on any judgment or charged off indebtedness shall forfeit such person's position as director and such vacancy shall be filled as provided by law.

History: L. 1947, ch. 102, § 43; L. 1957, ch. 73, § 1; L. 1959, ch. 59, § 1; L. 1975, ch. 44, § 19; L. 1976, ch. 57, § 1; L. 1983, ch. 46, § 3; April 21.

9-1116. Meetings of board; examination of records, funds and securities; recording of results; acceptance of audit by certified public accountant or auditor. The board of directors shall hold at least four regular meetings each year, at least one of which shall be held during each calendar quarter. The board of directors or an auditor selected by the board shall make a thorough examination of the books, records, funds

and securities held by the bank at each of the quarterly meetings and the result of such examination shall be recorded in detail. If the board selects an auditor, the auditor's findings shall be reported directly to the board. In lieu of the required four quarterly examinations, the board of directors may accept one annual audit by a certified public accountant or an independent auditor approved by the commissioner.

History: L. 1947, ch. 102, § 45; L. 1967, ch. 71, § 1; L. 1970, ch. 62, § 1; L. 1975, ch. 44, § 20; L. 1983, ch. 46, § 4; April 21.

Article 14.—BANKING CODE; DEPOSIT OF PUBLIC MONEYS

9-1401. Designation of depositories for municipal and quasi-municipal funds; duty of public officers. (a) The governing body of any municipal corporation or quasi-municipal corporation shall designate by official action recorded upon its minutes the state and national banks, trust companies, state and federally chartered savings and loan associations and federally chartered savings banks which shall serve as depositories of its funds and the officer and official having the custody of such funds shall not deposit such funds other than at such designated banks, trust companies, savings and loan associations and federally chartered savings banks. The state and national banks, trust companies, state and federally chartered savings and loan associations and federally chartered savings banks which have home offices located in the county or counties in which all or part of such municipal corporation or quasi-municipal corporation is located shall be designated as such official depositories if the municipal or quasi-municipal corporation can obtain satisfactory security therefor.

(b) Every officer or person depositing public funds shall deposit all such public funds coming into such officer or person's possession in their name and official title as such officer. If the governing body of the municipal corporation or quasi-municipal corporation fails to designate an official depository or depositories, the officer thereof having custody of its funds shall deposit such funds with one or more state or national banks, trust companies, state or federally chartered savings and loan associations or federally chartered savings banks