Approved February 9, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS.

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on February 7, 1984 in room 529-S of the Capitol.

All members were present except:

Committee staff present:

Bill Wolff, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Donald Horttor, Delta Dental
Carl Sandstrom, Assistant Banking Commissioner

The minutes of February 2 were approved.

Copies of the written testimony of Harold Stones, Kansas Bankers Association, which had been requested by the chairman had been distributed to each committee member. (See Attachment I.)

The chairman called on Donald Horttor, Delta Dental, to present his request for the introduction of a bill which would allow nonprofit dental service corporations to have the same flexibility as nonprofit medical corporations. (See Attachment II.)

Sen. Pomeroy made a motion that the bill be introduced and referred back to committee. Sen. Harder seconded the motion, and the motion carried.

The chairman called on Carl Sandstrom, Assistant Banking Commissioner, to present further testimony on SB 528. Mr. Sandstrom requested to amend SB 528 as submitted. (See Attachment III.)

The chairman asked Mr. Sandstrom if the passage of this bill would permit the Bank Department to either accept or reject a bank merger. Mr. Sandstrom answered that this was the case--that it would give more authority to the Bank Department.

Sen. Pomeroy asked if it would not be necessary to amend line 32 of the bill the same as was requested for Section 1 to add "or institution". Mr. Sandstrom agreed that this would be necessary. The chairman noted that a question might arise as to what the definition of "institution" is. Mr. Sandstrom agreed but added that it was intended that "institution" refer to nonbanking corporations merging with banks. He also agreed with the chairman that there is a possibility that it could be interpreted to include savings and loans.

Sen. Harder asked for a clarification as to if currently banks can merge without the Banking Commissioner's approval but with just the FDIC approval. Mr. Sandstrom said that this is the case now but that SB 528 would require the approval of both.

There being no further questions, the hearing on SB 528 was concluded. The chairman asked the committee if they desired to work the bill. Sen. Pomeroy felt that the Revisor's Office should prepare a balloon with the suggested amendments before the committee takes action on the bill, and the chairman so instructed staff. Also, Sen. Pomeroy asked that staff include in its report whether or not the use of the word "institution" is the correct term to be used.

After having asked if anyone else wished to be heard and receiving no response, the chairman announced that the meeting was adjourned.

ENATE COMMITTEE

ON

COMMERCIAL AND FINANCIAL INSTITUTIONS

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2-7	Tom Fritzlen	Lawrence	Sen Hess
2-7	Don Hoston	Topeka	Delta Dental
2-7	Ed Rolfs	Overland Park	Delta Dental
"	Jim Kaster	Valley Center	KCUL
"	Paul Wright	Topeka	KCUL
	Carl Sandstrom	"	Dan King
"	Ron Smith	"	KIBA
"	Tom Wilder	"	KLSI
"	Jim Maag	"	KBA
"	Harold Storer	"	"
"	Terry Wooten	Topeka	EAGLE-BEACON
	RICHARD TAPSCOTT	"	KC TIMES

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 2, 1984

TO: The Hon. Neil H. Arasmith, Chairman
Senate Committee on Commercial & Financial Institutions

FROM: Harold Stones
Kansas Bankers Association

RE: Testimony Presented to Senate Committee on C&FI on 1/31/84 ---
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.

Office of Executive Vice President • 707 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444

Attachment I

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

HAROLD A. STONES
Executive Vice President

AN ACT

Relating to the Contracts and Authorizations and Purposes of Nonprofit Dental Service Corporations; Amending K.S.A. 40-19a04.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

40-19a04. Contracts. Corporations organized under the provisions of this act are empowered and authorized to enter into contracts with groups and individuals to provide professional service through their participating dentists and to indemnify covered persons who obtain professional services through nonparticipating dentists. The services covered under such contracts shall be of such type and kind as such corporation, through its board of directors, may determine. Such contracts shall constitute direct obligations of the participating dentists to the corporation's contract purchasers: Provided, however, That nothing in any contract to be made by any such corporation with a participating dentist or contract purchaser shall have the effect of imposing upon any participating dentist any obligation or liability for any act, omission or default of any other participating dentist or such corporation. Such corporation may also enter into contracts with any *health maintenance organization, partnership,* domestic or foreign corporation or association in the state of Kansas or in other states or possessions of the United States or Canada, or with any local, state, or federal governments, or units thereof, so that

(a) Reciprocity of benefits may be provided to subscribers of such corporations.

(b) Transfer of subscribers from one corporation to another may be effected, if authorized under the contract with the group or the subscriber, in order to conform to the subscriber's place of residence.

(c) Uniform benefits may be provided for all employees and the dependents of such employees of corporations and other organizations transacting business in Kansas and elsewhere, and a composite rate (a rate representing predicted, or actual, composite experience) of the areas involved may be charged for such employees and their dependents.

(d) Service or indemnity benefits for dental care for the subscribers, members or policyholders of such corporations or associations may be provided but not to exceed reasonable and customary

Attachment II

charges that a subscriber may incur for these services, or the ceding or accepting of reinsurance may be done.

(e) Administrative, accounting, data processing, cost control, marketing, claims processing, fiscal and other services may be provided for a dental care or other health service plan with any agency, instrumentality or political subdivision of the United States or the state of Kansas, or with any person, corporation, health maintenance organization, partnership, group, or association providing such dental care or other health service plan under any applicable state or federal law. Such contract may authorize such corporation to accept, receive, and administer in trust, funds directly or indirectly made available for the purposes set forth in said contract.

(f) Administrative, accounting, data processing, cost control, marketing, claims processing, fiscal and other services may be provided to employers or voluntary employees' beneficiary associations where such employers or voluntary employees' beneficiary associations provide indemnity for dental care or other health services to their employees or members under the terms of a plan of indemnification. Such contract may authorize such corporation to accept, receive and administer in trust, funds directly or indirectly made available for the purposes set forth in said contract. Contracts entered into pursuant to the provisions of this sub-section shall provide for recoupment of all expenses incurred by the corporation in performing the services required by said contract and shall not adversely affect the interests of subscribers. Such corporation may enter into contracts with participating dentists to provide professional services and other health services for such employees or members.

(g) Experimental or demonstration projects may be undertaken to determine the relative advantages and disadvantages of various alternative methods of providing service or indemnity benefits for health services. Such projects may include payment systems to providers designed to encourage providers to use their facilities and personnel more efficiently and thereby to reduce the total costs of professional services and other health services involved without adversely affecting the quality of such services.

TESTIMONY OF: STATE BANK COMMISSIONER EUGENE C. HEGARTY
KANSAS BANKING DEPARTMENT ON SB 528

PRESENTED TO: THE SENATE COMMERCIAL & FINANCIAL INSTITUTION COMMITTEE

FEBRUARY 6, 1984

SB 528

MR. CHAIRMAN, WE FEEL A NEED TO MAKE AN AMENDMENT TO OBTAIN CONTINUITY THROUGHOUT THIS BILL, LINE 18, FOLLOWING THE WORD "CONSOLIDATED" ADD "WITH OR TRANSFER ITS ASSETS AND LIABILITIES TO ANOTHER BANK OR INSTITUTION".

LINE 20 FOLLOWING CONSOLIDATION ADD "OR TRANSFER".

LINE 25 FOLLOWING CONSOLIDATION ADD "OR TRANSFER".

LINE 27 FOLLOWING CONSOLIDATION ADD "OR TRANSFER".

LINE 33 FOLLOWING CONSOLIDATION ADD "OR TRANSFER".

LINE 34 FOLLOWING CONSOLIDATION ADD "OR TRANSFER".

LINE 37 FOLLOWING CONSOLIDATION ADD "OR TRANSFER".

LINE 41 FOLLOWING CONSOLIDATION ADD "OR TRANSFER".

MR. CHAIRMAN AND COMMITTEE, BECAUSE OF AN OPINION ISSUED BY THE ATTORNEY GENERAL (83-29) INWHICH HE AGREED AN INTERMIN CORPORATION COULD BE MERGED INTO A BANK WITHOUT THE APPROVAL OF THE BANKING COMMISSIONER AS CHAPTER 9 OF KANSAS STATUTES, WHICH CONTAINS THE SPECIAL STATUTORY REGULATIONS PERTAINING SPECIFICALLY TO BANKS AND BANKING. THERE ARE NO PROVISIONS IN CHAPTER 9 WHICH PURPORT TO GOVERN OR COULD BE CONSTRUED TO RESTRICT MERGERS OF GENERAL BUSINESS CORPORATIONS INTO STATE BANKS.

THE BANKING DEPARTMENT IS REQUESTING THIS BILL BE INTRODUCED IN ORDER TO MAINTAIN SOME CONTROL AND ESTABLISH A PROCEDURE OVER INTERMIN (PHANTOM) OR ANY OTHER BANK MERGERS THAT ARE NOW BEING ACCOMPLISHED BY THIS ABOVE OPINION.

ALL BANK MERGERS NOW COME UNDER THE BANK MERGER ACT (12 USC 1828 (c). AND NEED THE APPROVAL OF THE FDIC BEFORE THIS MERGER CAN BE ACCOMPLISHED. FDIC PROCEDURES RECITES THEY WILL NOT TAKE FINAL ACTION ON ANY APPLICATION UNTIL STATE BANK REGULATORS HAVE APPROVED OR EXPRESSED AN INTENT TO APPROVE THE PROPOSED MERGER. CURRENTLY, UNDER CHAPTER 9 THIS DEPARTMENT HAS NO AUTHORITY TO APPROVE OR DISAPPROVE SUCH A MERGER.

(SEE PAGE #2)

Attachment III

SB 528 (CONT.)

THE TERM "PHANTOM BANK MERGER" APPLIES TO ANY MERGER OR OTHER TRANSACTION INVOLVING AN EXISTING OPERATING BANK AND A NEWLY CHARTERED BANK OR CORPORATION WHICH IS FOR THE PURPOSE OF CORPORATE REORGANIZATION AND WHICH WOULD HAVE NO EFFECT ON COMPETITION OR OTHERWISE HAVE SIGNIFICANCE UNDER THE RELEVANT STATUTORY STANDARDS AS SET FORTH IN 12 USC 1828(c).

BILL NO. SB 528

AN ACT relating to banks and banking; concerning merger or consolidation of banks.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF KANSAS:

Section 1. Before any banks can merge or consolidate with or transfer its assets and liabilities to another bank or institution under the provisions of Chapter 67 of Article 17 of the Kansas Statutes Annotated, each bank concerned in such merger or consolidation or transfer shall file, or cause to be filed, with the State Banking Commissioner, certified copies of all proceedings had by its directors and stockholders. The stockholders' proceedings shall show that a majority of the stockholders voted in favor of the merger or consolidation. The stockholders' proceedings shall also contain a complete copy of the agreement made and entered into between the banks, with reference to such merger or consolidation or transfer.

Upon the filing of the stockholders and directors' proceedings, the Commissioner shall make an investigation of each bank to determine whether:

(a) The interests of the depositors, creditors and stockholders of each bank are protected;

(b) the merger or consolidation or transfer is in the public interest; and

(c) the merger or consolidation or transfer is made for legitimate purposes.

The Commissioner's consent to or rejection of such merger or consolidation or transfer shall be based upon such investigation. No merger or consolidation or transfer shall be made without the consent of the Commissioner. The expense of the investigation shall be paid by the banks.

Notice of the merger or consolidation or transfer shall be published at least once each week for four consecutive weeks before or after the merger or consolidation or transfer is to become effective, at the discretion of the Commissioner, in a newspaper of general circulation published in a city or county in which each of the banks is located and a certified copy of the notice shall be filed with the Commissioner.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

liabilities for any portion of the deposits made in such insured bank.

(2) No insured bank shall merge or consolidate with any other insured bank or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured bank except with the prior written approval of the responsible agency, which shall be–

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a District bank;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank (except a District bank).

(C) The Corporation if the acquiring, assuming, or resulting bank is to be a nonmember insured bank (except a District bank).

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a "merger transaction") shall, unless the responsible agency finds that it must act immediately in order to prevent the probable failure of one of the banks involved, be published–

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) In the interests of uniform standards, before acting on any application for approval of a merger transaction, the responsible agency, unless it finds that it must act immediately in order to prevent the probable failure of one of the banks involved, shall request reports on the competitive factors involved from the Attorney General and the other two banking agencies referred to in this subsection. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the requesting agency advises the Attorney General and the other two banking agencies that an emergency exists requiring expeditious action.

(5) The responsible agency shall not approve–

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the banks involved and reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General and the other two banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of Title 15, the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced

proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured bank or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the bank or from its assets.

Powers of examiner.

12 U.S.C. 1820.–(c) In connection with examinations of insured banks, and affiliates thereof, the appropriate Federal banking agency,[1] or its designated representatives, shall have the power to administer oaths and affirmations and examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such bank or affiliate thereof, and to issue subpenas and subpenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the main office of the bank or affiliate thereof is located, or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpena. For purposes of this section, the term "affiliate" shall have the same meaning as where used in section 221a(b) except that the term "member bank" in said section 221a(b) shall be deemed to refer to an insured bank.

Federal Deposit Insurance Corporation as receiver.

12 U.S.C. 1821.–(c) Notwithstanding any other provision of law, whenever the Comptroller of the Currency shall appoint a receiver other than a conservator of any insured national bank or insured District bank, or of any noninsured national bank or District bank hereafter closed, he shall appoint the Corporation receiver for such closed bank.

[1] See note 1, p. 1-47.

Merger, consolidation, or takeover by insured banks.[2]

12 U.S.C. 1828.–(c)[3](1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured bank shall–

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits made in, or similar liabilities of, any noninsured bank or institution;

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of

[2] Uncodified amendments concerning bank mergers contained in P.L. 89-356 (1966 amendments to bank merger provisions in Federal Deposit Insurance Act)

(a) Any merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated prior to June 17, 1963, the bank resulting from which has not been dissolved or divided and has not effected a sale or distribution of assets and has not taken any other similar action pursuant to a final judgment under the antitrust laws prior to the enactment of this Act, shall be conclusively presumed to have not been in violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

(b) No merger, consolidation, acquisition of assets, or assumption of liabilities involving an insured bank which was consummated after June 16, 1963, and prior to the date of enactment of this Act, and as to which no litigation was initiated by the Attorney General prior to the date of enactment of this Act may be attacked after such date in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

(c) Any court having pending before it on or after the date of enactment of this Act any litigation initiated under the antitrust laws by the Attorney General after June 16, 1963, with respect to the merger, consolidation, acquisition of assets, or assumption of liabilities of an insured bank consummated after June 16, 1963, shall apply the substantive rule of law set forth in section 18(c)(5) of the Federal Deposit Insurance Act, as amended by this Act (12 U.S.C. 1828(c)(5)).

(d) For the purposes of this section, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1-7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12-27), and any other Acts in pari materia.

Any application for approval of a merger transaction (as the term "merger transaction" is used in section 18(c) of the Federal Deposit Insurance Act) which was made before the date of enactment of this Act, but was withdrawn or abandoned as a result of any objections made or any suit brought by the Attorney General, may be reinstituted and shall be acted upon in accordance with the provisions of this Act without prejudice by such withdrawal, abandonment, objections, or judicial proceedings.

[3] See 12 U.S.C. 1842 and 1849 and 15 U.S.C. 1, 2, and 18 for other antitrust provisions.