

MINUTES OF THE House COMMITTEE ON Commercial & Financial Institutions

The meeting was called to order by Representative Harold P. Dyck at
Chairperson

3:30 ~~xxx~~/p.m. on January 29, 1985 in room 527-S of the Capitol.

All members were present except: Representatives David Miller and David Louis, both excused.

Committee staff present: Bill Wolff, Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Myrta Anderson, Legislative Research Department
Virginia Conard, secretary

Conferees appearing before the committee:

Julie Young, General Counsel for the Bank Commissioner
Jim Maag, Director of Research, Kansas Bankers Association
James Turner, President, League of Savings Institutions
Stan Lind, Counsel & Secretary of Kansas Association of Finance Companies
Dick Compton, Director of Governmental Affairs, Midwest Engery, Inc.

Rep. Harold Dyck, chairman, called the first official meeting of the 1985 session to order. He stated that a number of requests for bills would be presented to the committee by some of the groups which work with this committee. He pointed out that their requests is simply to have bills introduced. The committee's voting to have the bills introduced did not mean that they were approving the proposed bills. There would be hearings on the proposed bills later.

Julie Young, General Counsel for the Bank Commissioner, presented three amendments--amending K.S.A. 9-801, 9-1112 and 9-1303. (See Attachment I for details on these three amendments.)

Rep. Bob Ott moved that the requested bill amending K.S.A. 9-801, 9-1112 and 9-1303 be introduced as a committee bill. Rep. Homer Jarchow seconded. Motion carried.

Jim Maag, Director of Research for the Kansas Bankers ASsociation, recommended the introduction of two amendments; one amending K.S.A. 1984 Supp. 9-1101, which he said could be incorporated with the proposal presented by Miss Young; and the second proposal would amend K.S.A. 9-1906. (See Attachments II and III)

Rep. Judith Runnels moved that the requested amendment to K.S.A. 9-1101 be incorporated within the bank commissioner's requested bill and that this be introduced as a committee bill. Rep. Dorothy Nichols seconded the motion. Motion carried.

Rep. Judith Runnels moved that the requested amendment to K.S.A. 9-1906 be introduced as a committee bill. Rep. Bob Ott seconded. Motion carried.

James Turner, President, League of Savings Institutions, requested the introduction of a bill dealing with finance subsidiaries which would equalize powers between state-chartered and federal-chartered savings and loan associations. (See Attachment IV)

Rep. Bob Ott moved that this request be introduced as a committee bill. Rep. Dorothy Nichols seconded the motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,
room 527-S, Statehouse, at 3:30 ~~xxx~~ p.m. on January 29, 19 85

Stanley Lind, Counsel for the Kansas Association of Finance Comapnies, requested the committee introduce two bills--one pertaining to the amending of K.S.A. 16-207 (see attachment V) and the other amending K.S.A. 16a.2.401 (attachment VI). Mr. Lind said that these proposals directly affect consumer finance companies and that these are consistent with the original draft of the Uniform Consumer Credit Code.

Rep. Bob Ott moved that the requested bill amending K.S.A. 16a2.401 be introduced as a committee bill. Rep. Judith Runnels seconded the motion. Motion carried.

Rep. Runnels moved that the requested bill amending K.S.A. 16.207 be introduced as a committee bill. Rep. Ivan Sand seconded the motion. Motion carried.

Chairman Dyck introduced Rep. Frank Buehler, who spoke briefly on HB2042. Rep. Buehler then asked Dick Compton, Director of Governmental Affairs for Midwest Energy, Inc., to testify for the bill.

Before Mr. Compton's testimony, Chairman Dyck pointed out to the committee that normally the Committee hears a bill one day and votes on it at a later date. "If you want to act on this bill today, I want you to know that would be all right with me; otherwise, we might come back on Thursday."

Mr. Compton then proceeded with his testimony on HB2042. (See Attachment VII)

Rep. Dorothy Nichols moved that HB2042 be passed out favorably. Rep. J. C. Long seconded the motion. Motion carried.

Miss Young introduced the new Deputy Bank Commissioner, Michael Heitman, to the Committee. He is replacing Carl Sandstrom.

The meeting adjourned at 4:30. The next meeting will be announced in the House calendar.

ATTACHMENT

5 RS 0186

BILL NO. _____

AN ACT relating to banks and banking; concerning the organization thereof; relating to unlawful transactions; concerning examinations; amending K.S.A. 9-801, 9-1112 and 9-1303 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 9-801 is hereby amended to read as follows: 9-801. Any five ~~(5)~~ or more persons may organize a bank and make and file articles of incorporation as provided by the laws of the state of Kansas. Except as otherwise provided in subsection (b) of K.S.A. 9-1801, and amendments thereto, no banking corporation ~~hereafter~~ shall be organized or incorporated to engage in business as such until the articles of incorporation ~~shall~~ have been submitted to and ~~shall~~ have been approved by the board. The name selected for ~~such~~ the bank shall not be the name of any other bank doing business in the same city or town, and ~~such~~ the name shall be accepted or rejected by the board. The articles of incorporation in addition to ~~such~~ the information as now is required by law shall contain the names and addresses of its stockholders, the amount of common stock subscribed by each, and ~~such~~ the articles of incorporation may contain such other provisions as are consistent with ~~the~~ law. The articles of incorporation shall be subscribed by at least five ~~(5)~~ of the stockholders of the proposed bank or the parent company of such proposed bank who are residents of the state of Kansas, and shall be acknowledged by them, ~~and~~. The full amount of the common stock including the surplus and undivided profits as required by this act shall be subscribed before the articles of incorporation are filed.

Sec. 2. K.S.A. 9-1112 is hereby amended to read as follows:

9-1112. No bank shall use its moneys, directly or indirectly by buying and selling tangible property as a business. No bank shall invest any of its funds in the stock of any other bank or corporation, except as provided in this act. No bank shall purchase any instrument, contract, security or other asset from any of its executive or managing officers or employees or from the bank's parent company or a subsidiary of the bank's parent company, except upon approval of the commissioner. No bank shall sell or give any of its assets to any executive or managing officer or employee or to the bank's parent company or a subsidiary of the bank's parent company, except upon approval of the commissioner. Approval of the commissioner need not be obtained for an assignment of third-party loans and security for the payment thereof to or from a subsidiary of the bank's parent company.

No bank shall make any loan or discount on the security of its own shares of stock, or the shares of stock of the bank's parent company or subsidiary of the bank's parent company, nor acquire any of such shares unless the same be is necessary to prevent loss upon a debt previously contracted in good faith, in which event such stock must be disposed of within six months at public or private sale. After the expiration of six months no such stock shall be carried as a book asset. Any bank may hold and sell any kind of property coming into its ownership in the collection of debts, but such property as which is not a legal investment for banks shall be disposed of as soon as possible and. No personal property so acquired, except legal investments, shall be carried as a book asset after the expiration of six months from the date it is acquired ~~the--same~~ unless the commissioner shall authorize a bank to carry such property as a book asset for a longer period of time.

Sec. 3. K.S.A. 9-1303 is hereby amended to read as follows:
9-1303. The state bank commissioner hereby is authorized to accept any report of examination of a state bank or trust company made within a reasonable period by the federal deposit insurance

corporation or its successor, by the federal reserve bank or by the certified public accountant or independent auditor auditing the accounts of any bank or trust company insured by a private insurer, as authorized under the provisions of this act, but only one such report of examination shall be accepted in lieu of any examination required by this act in any one calendar year. When the commissioner accepts any report of examination of a state bank or trust company made by the federal deposit insurance corporation or its successor, by the federal reserve bank or by the certified public accountant or independent auditor auditing the accounts of any bank or trust company insured by a private insurer, as authorized under the provisions of this act, ~~such~~ the commissioner shall collect ~~fifty-percent-(50%)~~ 50% of the fee specified by law for a direct examination of such bank or trust company by the state. The commissioner also may accept any report obtained by ~~said~~ the insurance corporation, the federal reserve bank or private insurer within a reasonable time relative to the condition of any bank or trust company in lieu of any report required by this act.

The commissioner shall furnish to ~~said~~ the insurance corporation or private insurer, or to any officer or examiner thereof, a copy of any or all examination reports made by the commissioner, or the commissioner's examiners, of any bank or trust company insured by ~~such~~ the corporation or insurer, and any or all reports made to ~~such~~ the commissioner by any bank or trust company insured by such corporation or insurer, ~~and in furtherance thereof~~. The commissioner may disclose to ~~said~~ the insurance corporation or private insurer, or any official or examiner thereof, any and all information contained in ~~such~~ the commissioner's office concerning the condition of affairs of any bank or trust company insured by such corporation or insurer.

The commissioner may furnish to the federal reserve bank, or to any officer or examiner thereof, a copy of any or all examination reports made by the commissioner, or the commissioner's examiners of any bank or trust company which is a

member or nonmember of the federal reserve system and any or all reports made to ~~such~~ the commissioner by any bank or trust company which is a member of the federal reserve system, ~~and in furtherance thereof.~~ The commissioner may disclose to the federal reserve bank, or any officer or examiner thereof, any and all information contained in ~~such~~ the commissioner's office concerning the condition of affairs of any bank or trust company which is a member or nonmember of the federal reserve system. Nothing in this act shall be construed to limit the powers of the commissioner with reference to examinations and reports required by this act.

Sec. 4. K.S.A. 9-801, 9-1112 and 9-1303 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Section 1. K.S.A. 1984 Supp. 9-1101 is hereby amended to read as follows:

9-1101. Any bank hereby is authorized to . . .

(3) to buy and sell bonds, securities, or other evidences of indebtedness of the United States of America or those fully guaranteed, directly or indirectly, by it, and general obligation bonds of the state of Kansas or any municipality or quasi-municipality thereof, and of other states, and of municipalities or quasi-municipalities in other states of the United States of America. No bank shall invest an amount in excess of 15% of its capital ~~and surplus~~ stock paid in and unimpaired and the unimpaired surplus fund of such bank in bonds, securities or other evidences of indebtedness of any municipality or quasi-municipality of any other state

Sec. 2. K.S.A. 1984 Supp. 9-1101 is hereby repealed.

Sec. 3. This Act shall take effect and be in force from and after its publication in the statute book.

Section 1. K.S.A. 9-1906 is hereby amended to read as follows:

9-1906. The receiver, under the direction of the commissioner, shall take charge of any insolvent bank or trust company and all of its assets and property, and liquidate the affairs and business thereof for the benefit of its depositors and creditors and stockholders. Such receiver may sell or compound all bad and doubtful debts and sell all the property of any such bank or trust company upon such terms as the district court of the county wherein the bank or trust company is located shall approve. The receiver shall pay over all monies received to the creditors and depositors of such bank or trust company as the same shall be ordered by the commissioner.

In distributing assets of an insolvent bank or trust company in payment of its liabilities, the order of payment, in the event its assets are insufficient to pay in full all of its liabilities, shall be by category as follows: (1) the costs and expenses of the receivership; (2) claims which are secured, or given priority by applicable law; (3) claims of unsecured depositors; (4) all other claims exclusive of claims on capital notes and debentures; (5) claims on capital notes and debentures.

Should the assets be insufficient for the payment in full of all claims within a category, such claims shall be paid in the order provided by other applicable law or, in the absence of such applicable law, pro rata.

Sec. 2. K.S.A. 9-1906 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

KLSI Kansas
League of
Savings
Institutions

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

January 29, 1985

TO: COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS
FROM: JIM TURNER, KANSAS LEAGUE OF SAVINGS INSTITUTIONS
RE: REQUEST FOR COMMITTEE BILL

The Kansas League of Savings Institutions respectfully requests the introduction of the attached bill dealing with finance subsidiaries by the Committee on Commercial and Financial Institutions.

The proposed bill would equalize powers between state-chartered and federally-chartered savings and loan associations. Such authority was granted to federal associations in 1984 (12 C.F.R. Parts 561-571 and 12 C.F.R. 545.82). The State Savings and Loan Commissioner issued a Special Order on September 21, 1984, equalizing powers in the area of finance subsidiaries.

James R. Turner
President

JRT:bw

Encl.

AN ACT relating to savings and loan associations;

concerning establishment of finance subsidiaries.

Be it enacted by the Legislature of the State of Kansas:

Section 1: Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, any state chartered savings and loan association having its principal office in this state which is a member of a federal home loan bank, may borrow, give security, and issue notes, bonds, debentures or other obligations or other securities, including capital stock, directly or indirectly, through a wholly owned finance subsidiary corporation, and may invest in, transfer, or make available assets to any such finance subsidiary corporation to the same extent it could if it were operating as a federal savings and loan association.

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

LAW OFFICES OF

GOODELL, STRATTON, EDMONDS & PALMER

TWO FIFTEEN EAST EIGHTH AVENUE

TOPEKA, KANSAS 66603

AREA CODE 913-233-0593

GERALD L. GOODELL
WAYNE T. STRATTON
ROBERT E. EDMONDS
ARTHUR E. PALMER
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HAROLD S. YOUNGENTOB
CHARLES R. HAY
PATRICK M. SALSBUURY
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JO E. JENKINS
THOMAS L. BELL

November 19, 1984

Mr. James R. Turner, President
Kansas League of Savings Institutions
Suite 612, 700 Kansas Avenue
Topeka, Kansas 66603

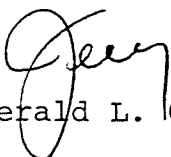
Re: Finance Subsidiaries

Dear Jim:

I enclose, herewith, a suggested Bill to cover the Special Order issued by the Commissioner allowing State Chartered Institutions to establish finance subsidiaries to the same extent that federals are allowed to do so.

I have tried to keep the Bill as simple as possible to avoid practical problems in trying to get it passed. I have also tried to make it a separate law rather than amendment of K.S.A. 17-5501 to avoid problems of exposing that entire legislation to the legislature. Please feel free to make any suggested changes or additions.

Very truly yours,


Gerald L. Goodell

GLG:mph

Enclosure

P.S. In my opinion, it would not be necessary to pass a bill dealing with the recently expanded investment authority. I believe the commissioner could approve the same under the current law which allows approval of "other securities approved by the commissioner." (K.S.A. 17-5501(j)(17))

GLG

207. Contract rate; method of determination; limitations, penalties for prepayment of certain loans, recording fees; contracting for interest in excess of limitation, penalties, attorney fees; excluding pension plan loans, business and agricultural loans and adjustable loans. [See Revisor's Note] (a) Subject to the following provision, the parties to any bond, bill, promissory note or other instrument of writing for the payment or forbearance of money may stipulate therein for interest receivable upon the amount of such bond, bill, note or other instrument of writing, at a rate not to exceed 15% per annum unless otherwise specifically authorized by law.

(b) The maximum rate of interest per annum for notes secured by all real estate mortgages and contracts for deed to real estate executed on or after the effective date of this act shall be at an amount equal to 1 1/2 percentage points above the average weighted yield of mortgages accepted under the federal home loan mortgage corporation's weekly purchase program effective on the first day of each

month unless otherwise specifically authorized by law. Such interest rate shall be computed for each calendar month and be effective on the first day thereof. The secretary of state shall publish notice of such maximum interest rate in the first issue of the Kansas register published each month. The initial rate of interest upon any conventional loan evidenced by a note secured by a real estate mortgage shall not exceed the rate quoted in the application executed by the borrower on the day on which application for such conventional loan is made.

(c) No penalty shall be assessed against any party for prepayment of any home loan evidenced by a note secured by a real estate mortgage where such prepayment is made more than six months after execution of such note.

(d) The lender may collect from the borrower:

(1) The actual fees paid a public official or agency of the state, or federal government, for filing, recording or releasing any instrument relating to a loan subject to the provisions of this section; and

(2) reasonable expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting or renewing of loans subject to the provisions of this section.

(e) Any person so contracting for a greater rate of interest than that authorized by this section shall forfeit all interest so contracted for in excess of the amount authorized under this section; and in addition thereto shall forfeit a sum of money, to be deducted from the amount due for principal and lawful interest, equal to the amount of interest contracted for in excess of the amount authorized by this section and such amounts may be set up as a defense or counterclaim in any action to enforce the collection of such obligation and the borrower shall also recover a reasonable attorney's fee.

(f) The interest rates prescribed in subsections (a) and (b) of this section shall not apply to a business or agricultural loan. For the purpose of this section unless a loan is made primarily for personal, family or household purposes, the loan shall be considered a business or agricultural loan. For the purpose of this subsection, a business or agricultural loan shall include credit sales and notes secured by contracts for deed to real estate.

(g) Loans made by a qualified plan, as defined in section 401 of the internal revenue code, to an individual participant in such plan or to a member of the family of such individual participant, are not subject to the interest rates prescribed in subsections (a) and (b) of this section.

(h) The interest rates prescribed in subsections (a) and (b) of this section shall not apply to a note secured by a real estate mortgage or a contract for deed to real estate where the note or contract for deed permits adjustment of the interest rate, the term of the loan or the amortization schedule.

(i) The interest rate prescribed in subsection (a) of this section shall not apply to a loan or a credit sale made primarily for personal, family or household purposes where the amount financed exceeds \$25,000.

16-2-401. (UCCC) Finance charge for consumer loans; exempting loans served by an interest in land. (1) With respect to a consumer loan, including a loan pursuant to open end credit, a lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding 18% per year on the unpaid balance of the amount financed not exceeding \$1,000 and 14.45% per year on that portion of the unpaid balance in excess of \$1,000.

(2) As an alternative to the rates set forth in subsection (1), with respect to a supervised loan made under a license issued by the administrator, including a loan pursuant to open end credit, a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding the equivalent of the greater of either of the following:

The total of (a) thirty-six percent per year on that part of the unpaid balance of the amount financed which is \$300 or less; and

(b) twenty-one percent per year on that part of the unpaid balance of the amount financed which is more than \$300, but does not exceed \$1,000; and

(c) fourteen and forty-five hundredths percent per year on that portion of the unpaid balance of the amount financed which is more than \$1,000; or

(d) eighteen percent per year on the unpaid balance of the amount financed.

(3) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section. The finance charge may be contracted for and earned at the single annual percentage rate that would earn the same finance charge as the graduated rates when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method. If the loan is precomputed:

(a) The finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (section 16a-2-510).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsections (1) and (2) if:

(a) When applied to the median amount within each range, it does not exceed the maximum amount permitted in subsections (1) and (2); and

(b) when applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph (a) by more than 8% of the rate calculated according to paragraph (a).

(6) Notwithstanding subsections (1) and (2), a lender may contract for and receive a minimum finance charge of not more than \$5 when the amount financed does not exceed \$75, or not more than \$7.50 when the amount financed exceeds \$75.

(7) This section shall not apply to a loan secured by an interest in land the interest rate of which is governed by subsection (b) of K.S.A. 16-207, and amendments thereto, unless made subject hereto by agreement.

(8) This section shall not apply to a loan secured by an interest in land subordinate to a prior mortgage and held by a lender other than the lender of the first mortgage, the interest rate of which is governed by subsection (b) or (h) of K.S.A. 16-207, and any amendments thereto, unless made subject hereto by agreement.

(9) As an alternative to the rates set forth in subsection (1) and subsection (2)(d), ~~during the period beginning on the effective date of this act and ending July 1, 1985,~~ a supervised lender may contract for and receive a finance charge not exceeding 21% per year on the unpaid balance of the amount financed.

16a-2-501. (UCCC) Additional charges. (1) In addition to the finance charge permitted by the parts of this article on maximum finance charges for consumer credit sales and consumer loans (parts 2 and 4), a creditor may contract for and receive the following additional charges in connection with a consumer credit transaction:

- (a) Official fees and taxes;
- (b) charges for insurance as described in subsection (2);
- (c) annual charges, payable in advance, for the privilege of using a lender credit card which entitles the user to purchase goods or services from at least one hundred (100) persons not related to the issuer of the lender credit card, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;
- (d) charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the finance charge by rule adopted by the administrator.

(2) An additional charge may be made for insurance written in connection with the transaction, including vendor's single interest insurance with respect to which the insurer has no right of subrogation against the consumer but excluding other insurance protecting the creditor against the consumer's default or other credit loss,

(a) with respect to insurance against loss of or damage to property, or against liability, if the creditor furnishes a clear and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained; and,

(b) with respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by

the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

- (e) closing costs;
- (f) any charge authorized by statute for handling a worthless check as defined by K.S.A. 21-3707, and amendments thereof;
- (g) a non-refundable origination fee not to exceed 3% discounted from the amount financed on any fixed rate loan secured by a real estate mortgage.

except as provided in subsection (c) herein,

; and,

(c) with respect to insurance protecting the creditor against the consumer's default or other credit loss when the consumer credit transaction is secured by a real estate mortgage.

New Section _____. (1) On and after January 1, 1987, every agreement evidencing a consumer credit transaction shall be written in a clear and coherent manner using words with common and every day meaning and each of the sections of all such agreements shall be appropriately divided and captioned, provided that any such caption shall not be used by any court in the interpretation of any such agreement.

(2) Any creditor, seller or lessor who fails to comply with this section shall be liable to the consumer who is a party to any such written agreement which is governed by this section in an amount equal to any actual damages sustained by the consumer plus a civil penalty of \$50. The total class action penalty against any such creditor, seller or lessor shall not exceed \$10,000 in any class action or series of class actions arising out of the use by a creditor, seller or lessor of an agreement which fails to comply with this section. No action under this section may be brought after both parties to the agreement have fully performed their obligation under such agreement, nor shall any creditor, seller or lessor who attempts in good faith to comply with this section be liable for such penalties.

(3) This section shall not apply to agreements involving amounts financed in excess of \$25,000 nor prohibit the use of words or phrases or forms of agreement required by state or federal law, rule or regulation or by a governmental instrumentality.

(4) A violation of the provisions of this section shall not render any such agreement void or voidable nor shall it constitute a defense to any action or proceeding for the breach of such agreement or to enforce such agreement.

(5) Each state agency shall develop model forms of agreements which are sufficient for governing the rights, duties and obligations of parties to transactions which are under its jurisdiction, and publish same in the Kansas Register no later than July 1, 1986, and provided further, that all such agencies are authorized to collectively develop and publish any such model forms in the interest of uniformity. The model forms of agreements shall indicate the simplicity and brevity in the form and content of agreements which this act contemplates and shall be for illustration only.

(6) As used in this section, the term "state agency" means the state bank commissioner, the savings and loan commissioner, the administrator of the state department of credit unions, and the consumer credit commissioner.

New Section _____.

(1) Any supervised lender located in the state of Kansas shall be authorized to contract for and receive charges at the maximum rate or amount permitted by law to be charged by any other creditor for the same type of credit extended in Kansas under the laws of this state or of the United States.

(2) In extending credit at a rate or amount that, but for this section, would not be authorized, the creditor shall indicate on the promissory note or other instrument evidencing the extension of credit, the provision of law authorizing the rate or amount charged.

VII

STATEMENT OF DICK COMPTON
BEFORE THE
HOUSE COMMERCIAL AND FINANCIAL INSTITUTIONS COMMITTEE
JANUARY 29, 1985
IN SUPPORT OF HOUSE BILL 2042

1. Mr. Chairman and members of the Committee, thank you
2. for considering House Bill 2042 and for allowing me to
3. appear in support of it. My name is Dick Compton. I am
4. Director of Governmental Affairs for Midwest Energy, Inc.
5. at Hays.

6. ABOUT MIDWEST ENERGY, INC.

7. Midwest Energy serves approximately 30,000 electric
8. consumers in a 22 county area of central and northwest
9. Kansas. Included in the service territory are forty-four
10. (44) cities, towns and/or villages that are provided with
11. retail electric service. Midwest also provides bulk power
12. and energy at wholesale to eight (8) municipal electric
13. utilities within its service area. They are Colby, Oakley,
14. Hill City, Ellis, LaCrosse, Jetmore, Seward and Radium.

15. Midwest is also a retail supplier of natural gas
16. service in that it serves approximately 11,000 natural gas
17. customers in the communities of Hays, Ellis, WaKeeney and
18. Ogallah. Natural gas is also served by Midwest to some
19. rural customers in areas around these communities.
20. The community of Hays is the largest community served by
21. Midwest and it is provided with both electric and natural
22. gas service. Hays is also the location of the general
23. offices of Midwest.

1. FORMATION OF MIDWEST

2. Midwest Energy, Inc. is the result of a merger of two
3. separate utilities that was announced in the late seventy's
4. and consumated in the early eighty's. The utilities were
5. Central Kansas Electric Cooperative which was headquartered
6. in Great Bend and Central Kansas Power Company, Inc. which
7. was headquartered in Hays. Central Kansas Electric
8. Cooperative was a not for profit membership cooperative
9. organized under and subject to the provisions of the
10. Kansas "Electric Cooperative, Nonprofit, Membership
11. Corporations" Act KSA 17-4601. Central Kansas Power Company,
12. Inc. was a for profit corporation organized under the Kansas
13. "General Corporate Code" KSA 17-6001 and it was a wholly
14. owned subsidiary Company of United Telecommunications, Inc.,
15. which is headquartered in Shawnee Mission, Kansas.

16. Late in the 1970's, the board of directors of Central
17. Kansas Electric Cooperative authorized a purchase of all of
18. the outstanding shares of common stock of Central Kansas
19. Power Company from United Telecommunications. The stock was
20. purchased and the two (2) utilities were merged into one (1)
21. early in the 1980's. The new utility was named and has been
22. operating as Midwest Energy, Inc. since that time.

23. CONSIDERATIONS OF CORPORATE CHARTER

24. To my knowledge, there are four (4) statutes available
25. under Kansas law which corporations can, depending on their
26. particular circumstances, file their incorporation documents
27. under with the Secretary of State. They are:

1. a. KSA 17-1501 Cooperative Societies
2. b. KSA 17-1601 Cooperative Marketing
3. c. KSA 17-4601 Electric Cooperative, Nonprofit,
4. Membership Corporations

5. d. KSA 17-6001 The General Corporate Code

6. The Cooperative Societies Act, KSA 17-1501, appears to

7. have been placed in the statute books to accomodate mutuals,

8. certain telephone cooperatives, nonprofit health care groups

9. and the list is probably extensive. Midwest, as an electric

10. and gas utility company, obviously does not fit within the

11. preview of this statute.

12. The Cooperative Marketing Act, KSA 17-1601, was

13. obviously directed to petroleum and grain cooperatives and,

14. as an electric and gas utility company, Midwest does not

15. qualify for incorporation under this statute.

16. The Electric Cooperatives, Nonprofit, Membership

17. Corporations Act, KSA 17-4601, is specifically for electric

18. cooperatives and as a combination utility (electric and gas)

19. Midwest was unable to qualify for incorporation under this

20. statute.

21. On the advise of legal council, Midwest is incorporated

22. under the General Corporate Code of Kansas, KSA 17-6001; as

23. a not for profit membership corporation. Legally, Midwest

24. is not an electric cooperative but practically speaking,

25. it is. Midwest conducts its business in virtually every

26. respect just as any electric cooperative in the State

27. does. The only difference is that we are incorporated under

1. a different statute.

2. CAPITAL CREDITS

3. As you are probably aware, a not for profit membership
4. corporation and/or a cooperatives stockholders are its
5. customers. As stockholder/customers our customers receive
6. capital credits, or patronage dividends as they are
7. sometimes referred to, in lieu of cash dividends that
8. would be expected from a normal, for profit, stock
9. organization. Capital credits are based on each individual
10. customers patronage with the organization. Capital credits
11. are assigned annually to each individual customer based on
12. his/her or their, if it is a corporation, patronage, or
13. purchases, during the previous year. Generally, once a
14. cooperative has achieved desired equity levels with
15. respect to capital structure, it begins to retire
16. (sometimes referred to as roll) its longest held capital
17. credits.

18. CAPITAL CREDITS PAYMENT

19. In the event a cash capital credits distribution is
20. directed by the Company's board of directors, a check is
21. mailed directly to all current customers who have earned
22. capital credits and all previous customers who have earned
23. capital credits provided they can be located. The Company
24. publishes lists in newspapers, makes mailings to last known
25. addresses and uses every known means to find all customers
26. who are due a capital credit. In some instances, however, it
27. is virtually impossible to locate a customer who had service

1. and earned capital credits during a period several years
2. previous to the actual distribution.

3. KANSAS-DISPOSITION OF UNCLAIMED PROPERTY ACT KSA 58-3901

4. With certain exceptions, the Kansas Unclaimed Property
5. Act provides that any money or property held or owing to a
6. person or corporation that can't be located must be remitted
7. to the State Treasurer after it is held for a maximum of
8. seven (7) years. In 1979 the Kansas legislature passed an
9. amendment to KSA 58-3929 to exempt capital credits and
10. patronage dividends from the provisions of the unclaimed
11. property act. The language adopted by the legislature in
12. 1979 is in paragraph (c) of KSA 58-3929 and it exempts only
13. those not for profit entities organized under the
14. Cooperative Societies, Cooperative Marketing and Electric
15. Cooperative Acts. Not for profit membership corporations
16. organized under the general corporate code were overlooked.
17. HOUSE BILL 2042

18. We are proposing in this bill that language be added to
19. the Disposition of Unclaimed Property Act that would also
20. exempt the capital credits of organizations that are in the
21. business of providing utility service and chartered under
22. KSA 17-6001 as not for profit utilities. The proposed
23. language addition is in paragraph (d) and it will provide
24. these cooperative groups the same exemption presently
25. extended to others.

1. OTHER AFFECTED UTILITIES

2. Other utilities that would be affected by this

3. legislation are:

4. Craw-Kan. Tel. Cooperative - Girard

5. Golden Belt Tel. Assn. - Rush Center

6. Pioneer Tel. Assn. - Ulysses

7. Rural Tel. Ser. Company - Lenora

8. S & T Tel. Cooperative - Brewster

9. South Central Tel. Assn. - Medicine Lodge

10. Tri-County Tel. Assn. - Council Grove

11. These telephone Cooperatives, Associations, and

12. Companies are all organized under the provisions of KSA

13. 17-6001 as not for profit entities just as Midwest Energy

14. is. Attached to this testimony is a letter from James M.

15. Caplinger, Executive Manager of the State Independent

16. Telephone Association. The essence of his correspondence

17. is that the State Independent Telephone Association has

18. been interpreting the 1979 amendment to also exempt their

19. capital credits from the Unclaimed Property Act, however,

20. they do support my proposed language change for

21. clarification purposes. Midwest's legal council does not

22. interpret the current language to exempt entities

23. incorporated under KSA 17-6001.

24. TREATMENT OF UNDISTRIBUTED FUNDS

25. Capital credits held by a Company are treated as

26. donated capital and serve to improve the Company's equity

27. position. An improved equity position can forstall the need

28. for future rate increases. Additionally, if a claim is ever

1. made by a customer who is due a payment, the payment is
2. promptly made. This is true irrespective of the time lapse
3. between when the distribution was declared and when the
4. customer makes the claim. The only requirement is that the
5. customer be able to substantiate in some way the validity of
6. the claim.

7. TOTAL AMOUNT OF MONEY INVOLVED

8. The amount of money involved is difficult to estimate
9. because what is required is that we estimate the number
10. of customers who have migrated from the system that we will
11. be unable to find. Our best guess, however, is that when we
12. reach a point of declaring a cash distribution we could be
13. talking about between \$15,000 and \$25,000 annually.

14. STATE TREASURER

15. As you are probably aware, the State Treasurer is
16. charged with administering the Unclaimed Property Act. I
17. have contacted the State Treasurer's office and after a good
18. deal of lengthy discussion, she has determined that she
19. has no opposition to this proposed clarification.

20. KCC

21. I have personally discussed this proposal with the
22. KCC's general council, Brian Moline and he did not indicate
23. that the KCC would want to object to House Bill 2042.

24. CONCLUSION

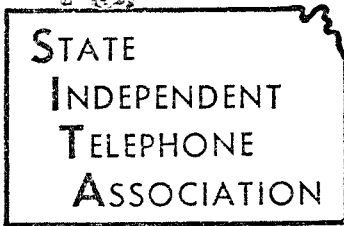
25. We believe you will find House Bill 2042 to be a
26. clarification measure, we hope you will consider it to
27. have merit and we would ask for its favorable

1. recommendation.

2. Thank you once again for this opportunity to appear. I

3. would be happy to answer any questions any of the committee

4. members may have.



823 WEST TENTH AVENUE
TOPEKA, KANSAS 66612
Telephone 232-0495

December 27, 1984

Mr. Dick Compton,
Director of Governmental Affairs
Midwest Energy
P. O. Box 898
Hays, Kansas 67601

In re: Clarifying Amendment to K.S.A. 58-3929

Dear Mr. Compton:

When the Kansas legislature enacted Senate Bill No.93, relating to the disposition of unclaimed property, Sec. 29(c) was added to clearly show that such legislation was not to apply to any patronage dividend or capital credit held or owing by any cooperative.

All telephone cooperatives organized and existing under Kansas law, and serving the rural areas of the State, were informed and have operated under the legislative intent to exempt cooperative capital credits and patronage dividends from the unclaimed property act.

We can certainly recognize your point that when Sec.29(c) of Senate Bill No. 93 ended up by saying "...or corporations organized under the provisions of K.S.A. 17-1501 et seq., 17-601 et seq., or 17-4601 et seq...", it could lead to an interpretation that any cooperative not organized under one of those sections is not exempt.

K.S.A. 17-6001 provides for non-profit corporations doing business as a cooperative, and to apply the unclaimed property act to them would not be in accord with the legislative intent, and certainly discriminating by nature.

The State Independent Telephone Association of Kansas would agree and support your proposed clarification, and if there is any information or testimony we may provide you and the legislature, please let us know.

Sincerely yours,

James M. Caplinger
James M. Caplinger
Executive Manager