Approved R.H. 2-14-85
Date

MINUTES OF THE House COMMITTEE ON Elections.

The meeting was called to order by Representative Richard L. Harper at
Chairperson

9:00 am a.m./p.m. on Tuesday, February 12, 1985 in room 521-S of the Capitol.

All members were present except: Representative Charlton, excused
Representative Foster, excused

Committee staff present: Myrta Anderson, Legislative Research Department
Mary Hack, Revisor of Statutes Office
Eric Rucker, Secretary of State's Office
Dottie Musselman, Committee Secretary

Conferees appearing before the committee:

Representative Bunten
Representative David Miller
Jim Edwards, Kansas Chamber of Commerce & Industry
Jim Maag, Kansas Bankers Association
Tom Whitaker, Kansas Motor Carriers Association
Representative Guldner

Chairperson Harper called the meeting to order, and recognized Representative Bunten.

Representative Bunten appeared before the committee to explain HB 2164, of which he is the author. He stated that this bill was a request of the local Shawnee County Chairman, and that the chairman had since resigned. HB 2164 An Act relating to elections; concerning political parties, was reviewed and following a short discussion, the hearing was closed on HB 2164.

HB 2155, An Act concerning elections and political parties; restrictions on certain activities by certain corporations, was next on the agenda and Representative David Miller was recognized. Representative D. Miller drew attention to the material passed out by persons opposing this bill. (Attachment 1). Particular attention was drawn to the reproduction of a letter from the Office of the Attorney General.

Representative D. Miller passed out copies of a letter addressed to him from the Bank Commissioner, regarding KSA 1983 Supp. 25-1709 which prohibits a bank from making political contributions. The original copy of this letter was given the committee secretary to file with the minutes. (Attachment 2). After giving the committee a briefing on HB 2155, a short discussion period followed.

Chairperson Harper next recognized Jim Edwards, Kansas Chamber of Commerce and Industry. Mr. Edwards told the committee that his organization had no position on HB 2155. Mr. Edwards passed out testimony that he had previously given to the Senate Election Committee on SB 138. (Attachment 3). Mr. Edwards told the committee he would be happy to appear before the committee on this bill at a later date.

Jim Maag, Kansas Bankers Association, came before the committee requesting that the committee report HB 2155 adversely. Tom Whitaker, Kansas Motor Carriers Association, came before the committee correcting a statement which was made by the conferee of the Kansas Bankers Association, with regard to truckers. As there were no more questions, the hearing was closed on HB 2155.

HB 2184, An Act relating to elections; concerning the contest of elections, was next on the agenda, and Chairperson Harper called upon Representative Guldner, author of this bill, to give the committee an explanation of the reasoning for same. This bill was drafted in order to correct the statutes by adding (d) illegal votes were received or legal votes were rejected which could change the result of the election.

MINUTES OF THE House COMMITTEE ON Elections,

room 521-S, Statehouse, at 9:00 am a.m./p.m. on Tuesday, February 12, 1985.

There was some discussion as to the wording of "could" and "would" in this bill. It was discussed to possibly change the could to would throughout the entire bill. At this point, Chairperson Harper suggested that the committee work on some admendments on HB 2184 to try to straighten the language out.

Following a brief discussion the hearing on HB 2184 was closed.

Representative Crumbaker made a motion that the committee approve the minutes of the February 5th meeting. Seconded by Representative Holmes. Motion carried.

The meeting adjourned at 9:35 a.m.

DATE July 12, '55

HOUSE COMMITTEE ON ELECTIONS

GUEST LIST

NAME	ADDRESS	REPRESENTING
Jim Reardon		SOS
Richard D. Kready	Topeka	KPL / Gas Service Co.
Kevin Robertson	"	"
Jim Edwards	"	KCCI

(attachment #1)

HOUSE COMMITTEE
ON
ELECTIONS

TESTIMONY ON HB 2155

BY
KANSAS BANKERS ASSOCIATION

FEBRUARY 12, 1985

H. Elect 2/12/85
(attachment #1)

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

February 12, 1985

TO: House Committee on Elections

FROM: James S. Maag
Kansas Bankers Association

RE: HB 2155

Mr. Chairman and members of the Committee:

Thank you, Mr. Chairman, for the opportunity to submit testimony on HB 2155. Like most trade associations, the Kansas Bankers Association maintains a political action committee which we refer to as "BankPac." From its inception in the mid-1970's until the summer of 1984, all solicitations for contributions to BankPac by the KBA BankPac committee were to individual directors, officers and personnel of Kansas banks. Following the issuance of attorney-general opinion 84-84, it was the decision of the KBA BankPac committee that they would also send a solicitation to all one-bank holding companies in Kansas. This resulted in the contribution of $4,200 by December 31, 1984.

The decision as to whether bank holding companies should be prohibited from making contributions to state and local political campaigns in Kansas obviously rests with the legislature. We would only note that the provisions of K.S.A. 25-1709 were passed in the early years of the 20th century when the political climate was much different that it is in the 1980's and the ability of other groups in commerce and industry over the years to contibute corporate funds to political campaigns has not been restricted. We would also note that many of the industries which are regulated by such state agencies as the Kansas Corporation Commission are no less subject to state law, rules and regulations than the state banking industry. We would further note, as the attached sheets show, bank holding companies have the authority to engage in activities other than the running of a subsidiary bank for holding companies.

We would only request that the committee look very closely at the existing statute and the proposed amendment as to whether the banking industry and bank holding companies are the victims of political discrimination as to how they can expend corporate funds for political contributions when compared to other regulated industries. We strongly believe that our industry has the right to participate to the same extent in the political process as all other industries so regulated. Therefore, Mr. Chairman and members of the committee, we respectfully request that the committee report HB 2155 adversely. We appreciate very much the opportunity to present testimony on this important legislative matter.

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

hearing only if there are disputed issues of material fact that cannot be resolved in some other manner.

(h) *Approval through failure to act; 91-day rule.* An application or notice under this subpart shall be deemed approved if the Board fails to act on the application or notice within 91 calendar days after the date of submission to the Board of the complete record on the application or notice. The procedures for computation of the 91-day rule as set forth in section 225.14(g) of subpart B of this regulation apply to applications and notices under this subpart.

(i) *Emergency thrift institution acquisitions.* In the case of an application to acquire a thrift institution, the Board may modify or dispense with the notice and hearing requirements of this section if the Board finds that an emergency exists that requires the Board to act immediately and the primary federal regulator of the institution concurs.

4–045

SECTION 225.24—Factors Considered in Acting on Nonbanking Applications

In evaluating an application or notice under section 225.23 of this subpart, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, and gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, and unsound banking practices) This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and any company to be acquired, and the effect of the proposed transaction on those resources. Unless the record demonstrates otherwise, the commencement or expansion of a nonbanking activity de novo is presumed to result in benefits to the public through increased competition.

4–046

SECTION 225.25—List of Permissible Nonbanking Activities

(a) *Closely related nonbanking activities.* The activities listed below are so closely related to banking or managing or controlling banks as to be a proper incident thereto and may be engaged in by a bank holding company or a subsidiary thereof in accordance with and subject to the requirements of this regulation.

(b) (1) *Making and servicing loans.* Making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others, such as would be made for example, by the following types of companies:

(i) consumer finance;
(ii) credit card;
(iii) mortgage;
(iv) commercial finance; and
(v) factoring.

(2) *Industrial banking.* Operating an industrial bank, Morris Plan bank, or industrial loan company, as authorized under state law, so long as the institution is not a bank.

4–047

(3) *Trust company functions.* Performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature), in the manner authorized by federal or state law, so long as the institution is not a bank and does not make loans or investments or accept deposits other than—

(i) deposits that are generated from trust funds not currently invested and that are properly secured to the extent required by law;

(ii) deposits representing funds received for a special use in the capacity of managing agent or custodian for an owner of, or investor in, real property, securities, or other personal property; or for such owner or investor as agent or custodian of funds held for investment or as escrow agent; or for an issuer of, or broker or dealer in securities, in a capacity such as a paying agent, dividend disbursing

agent, or securities clearing agent; provided such deposits are not employed by or for the account of the customer in the manner of a general-purpose checking account or interest-bearing account; or

(iii) making call loans to securities dealers or purchasing money market instruments such as certificates of deposit, commercial paper, government or municipal securities, and bankers acceptances. (Such authorized loans and investments, however, may not be used as a method of channeling funds to nonbanking affiliates of the trust company.)

4–048

(4) *Investment or financial advice.* Acting as investment or financial advisor to the extent of—

(i) serving as the advisory company for a mortgage or a real estate investment trust;

(ii) serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 USC 80a-2(a)(20)), to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company;

(iii) providing portfolio investment advice[1] to any other person;

(iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies;[2] and

(v) providing financial advice to state and local governments, such as with respect to the issuance of their securities.

4–049

(5) *Leasing personal or real property.* Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(i) the lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;

(ii) the property to be leased is acquired specifically for the leasing transaction under consideration or was acquired specifically for an earlier leasing transaction;

(iii) the lease is on a nonoperating basis;[3]

(iv) at the inception of the initial lease the effect of the transaction (and, with respect to governmental entities only, reasonably anticipated future transactions[4]) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financ-

[1] The term "portfolio investment" is intended to refer generally to the investment of funds in a "security" as defined in section 2(1) of the Securities Act of 1933 (15 USC 77b) or in real property interests, except where the real property is to be used in the trade or business of the person being advised. In furnishing portfolio investment advice, bank holding companies and their subsidiaries shall observe the standards of care and conduct applicable to fiduciaries.

[2] This is to be contrasted with "management consulting," which the Board views as including, but not limited to, the provision of analysis or advice as to a firm's (A) purchasing operations, such as inventory control, sources of supply, and cost minimization subject to constraints; (B) production operations, such as quality control, work measurement, product methods, scheduling shifts, time and motion studies, and safety standards; (C) marketing operations, such as market testing, advertising programs, market development, packaging, and brand development; (D) planning operations, such as demand and cost projections, plant location, program planning, corporate acquisitions and mergers, and determination of long-term and short-term goals; (E) personnel operations, such as recruitment, training, incentive programs, employee compensation, and management-personnel relations; (F) internal operations, such as taxes, corporate organization, budgeting systems, budget control, data processing systems evaluation, and efficiency evaluation; or (G) research operations, such as product development, basic research, and product design and innovation. The Board has determined that "management consulting" is not an activity that is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

[3] For purposes of the leasing of automobiles, the requirement that the lease be on a nonoperating basis means that the bank holding company may not, directly or indirectly (A) provide for the servicing, repair, or maintenance of the leased vehicle during the lease term; (B) purchase parts and accessories in bulk or for an individual vehicle after the lessee has taken delivery of the vehicle; (C) provide for the loan of an automobile during servicing of the leased vehicle; (D) purchase insurance for the lessee; or (E) provide for the renewal of the vehicle's license merely as a service to the lessee where the lessee could renew the license without authorization from the lessor.

[4] The Board understands that some federal, state, and local governmental entities may not enter into a lease for a period in excess of one year. Such an impediment does not prohibit a company authorized to conduct leasing activities under this paragraph from entering into a lease with such governmental entities if the company reasonably anticipates that the governmental entities will renew the lease

Continued

ing the property over the term of the lease,[5] from—

(A) rentals;

(B) estimated tax benefits (investment tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect);

(C) the estimated residual value of the property at the expiration of the initial term of the lease, which in no case shall exceed 20 percent of the acquisition cost of the property to the lessor; and

(D) in the case of a lease of personal property of not more than seven years in duration, such additional amount, which shall not exceed 60 percent of the acquisition cost of the property, as may be provided by an unconditional guarantee by a lessee, independent third party, or manufacturer, which has been determined by the lessor to have the financial resources to meet such obligation, that will assure the lessor of recovery of its investment and cost of financing;

(v) the maximum lease term during which the lessor must recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be 40 years; and

(vi) at the expiration of the lease (including any renewals or extensions with the same lessee), all interest in the property shall be either liquidated or released on a nonoperating basis as soon as practicable but in no event later than two years from the expiration of the lease;[6] however, in no case shall the lessor retain any interest in the property beyond 30 years after its acquisition of the property.

4–050

(6) *Community development.* Making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as the economic rehabilitation and development of low-income areas by providing housing, services, or jobs for residents.

(7) *Data processing.* Providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if—

(i) the data to be processed or furnished are financial, banking, or economic, and the services are provided pursuant to a written agreement so describing and limiting the services;

(ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and

(iii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

4–050.1

(8) *Insurance sales.* Except as prohibited in title VI of the Garn-St Germain Depositary Institutions Act of 1982 (12 USC 1843(c)(8)), acting as insurance agent or

Continued
annually until such time as the company is fully compensated for its investment in the leased property plus its costs of financing the property. Further, a company authorized to conduct personal property leasing activities under this paragraph may also engage in so-called "bridge" lease financing of personal property, but not real property, if the lease is short-term pending completion of long-term financing, by the same or another lender.

[5] The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee, if a factor in the financing, and prevailing rates in the money and capital markets.

[6] In the event of a default on a lease agreement prior to the expiration of the lease term, the lessor shall either release the property, subject to all the conditions of this paragraph, or liquidate the property as soon as practicable but in no event later than two years from the date of default on a lease agreement or such additional time as the Board may permit under section 225.22(c)(1) of this regulation, as if the property were DPC property.

broker in offices at which the holding company or its subsidiaries are otherwise engaged in business (or in an office adjacent thereto) with respect to the following types of insurance:

(i) any insurance that—

(A) is directly related to an extension of credit by a bank or bank-related firm of the kind described in this regulation, or

(B) is directly related to the provision of other financial services by a bank or such a bank-related firm; and

(ii) any insurance sold by a bank holding company or a nonbanking subsidiary in a community that has a population not exceeding 5,000 (as shown by the last preceding decennial census), if the principal place of banking business of the bank holding company is located in a community having a population not exceeding 5,000.

4–050.2

(9) *Underwriting credit life, accident and health insurance.* Acting as underwriter for credit life insurance and credit accident and health insurance that is directly related to an extension of credit by the bank holding company system.[7]

(10) *Courier services.* Providing courier services for—

(i) checks, commercial papers, documents, and written instruments (excluding currency or bearer-type negotiable instruments) that are exchanged among banks and financial institutions; and

(ii) audit and accounting media of a banking or financial nature and other business records and documents used in processing such media.[8]

[7] To assure that engaging in the underwriting of credit life and credit accident and health insurance can reasonably be expected to be in the public interest, the Board will only approve applications in which an applicant demonstrates that approval will benefit the consumer or result in other public benefits. Normally such a showing would be made by a projected reduction in rates or increase in policy benefits due to bank holding company performance of this service.

[8] See also the Board's interpretation on courier activities (12 CFR 225.129), which sets forth conditions for bank holding company entry into the activity.

4–050.3

(11) *Management consulting to depository institutions.* Providing management consulting advice[9] to nonaffiliated bank and nonbank depository institutions, including commercial banks, savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies, if—

(i) neither the bank holding company nor any of its subsidiaries own or control, directly or indirectly, any equity securities in the client institution;

(ii) no management official, as defined in 12 CFR 212.2(h), of the bank holding company or any of its subsidiaries serves as a management official of the client institution, except where such interlocking relationships are permitted pursuant to an exemption granted under 12 CFR 212.4(b);

(iii) the advice is rendered on an explicit fee basis without regard to correspondent balances maintained by the client institution at any depository institution subsidiary of the bank holding company; and

(iv) disclosure is made to each potential client institution of—

(A) the names of all depository institutions that are affiliates of the consulting company, and

(B) the names of all existing client institutions located in the same county(ies), metropolitan statistical area, or primary metropolitan statistical area as the client institution.[10]

[9] A bank holding company that has received the Board's prior approval to engage in offering management consulting advice to nonaffiliated commercial banks as of April 20, 1982, may offer such advice on a de novo basis to nonbank depository institutions pursuant to this paragraph without filing an application under section 225.23 of this subpart.

[10] In performing this activity, bank holding companies are not authorized to perform tasks or operations or provide services to client institutions either on a daily or continuing basis, except as necessary to instruct the client institution on how to perform such services for itself. See also the Board's interpretation of bank management consulting advice (12 CFR 225.131). This interpretation shall apply to the performance of management consulting services for commercial banks and any other type of depository institution.

4–050.4

(12) *Money orders, savings bonds, and traveler's checks.* The issuance and sale at retail of money orders and similar consumer-type payment instruments having a face value of not more than $1,000; the sale of U.S. savings bonds; and the issuance and sale of traveler's checks.

(13) *Real estate appraising.* Performing appraisals of real estate.

(14) *Arranging commercial real estate equity financing.* Acting as intermediary for the financing of commercial or industrial income-producing real estate by arranging for the transfer of the title, control and risk of such a real estate project to one or more investors, if—

(i) the financing arranged exceeds $1 million;

(ii) the bank holding company and its affiliates do not provide financing to the investors to acquire a real estate project for which the bank holding company arranges equity financing;

(iii) the bank holding company and its affiliates do not have an interest in or participate in managing, developing, or syndicating a real estate project for which it arranges equity financing, and do not promote or sponsor the development or syndication of such property; and

(iv) the fee received for arranging equity financing for a real estate project is not based on profits to be derived from the project and is not larger than the fee that would be charged by an unaffiliated intermediary.

4–050.5

(15) *Securities brokerage.* Providing securities brokerage services, related securities credit activities pursuant to the Board's Regulation T (12 CFR 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, if the securities brokerage services are restricted to buying and selling securities solely as agent for the account of customers and do not include securities underwriting or dealing or investment advice or research services.

(16) *Underwriting and dealing in government obligations and money market instruments.* Underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 USC 24 and 335, including bankers acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by the bank holding company's subsidiary member banks or its subsidiary nonmember banks as if they were member banks.

4–050.6

(17) *Foreign exchange advisory and transactional services.* Providing, by any means, general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for "swaps" among customers with complementary foreign exchange exposures and for the execution of foreign exchange transactions; provided the activity is conducted through a separately incorporated subsidiary of the bank holding company that—

(i) does not take positions in foreign exchange for its own account;

(ii) observes the standards of care and conduct applicable to fiduciaries with respect to its foreign exchange advisory and transactional services; and

(iii) does not itself execute foreign exchange transactions.

4–050.7

(18) *Futures commission merchant.* Acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments

that a bank may buy or sell in the cash market for its own account, if the activity is conducted through a separately incorporated subsidiary of the bank holding company that—

(i) does not become a clearing member of any exchange or clearing association that requires the parent corporation of the clearing member to also become a member of that exchange or clearing association unless a waiver of the requirement is obtained;

(ii) does not trade for its own account except for the purpose of hedging a cash position in the related government security, bullion, foreign currency, or money market instrument;

(iii) time stamps orders of all customers to the nearest minute, executes all orders strictly in chronological sequence to the extent consistent with the customers' specifications, and executes all orders with reasonable promptness with due regard to market conditions;

(iv) does not extend credit to customers for the purpose of meeting initial or maintenance margins required of customers except for posting margin on behalf of customers in advance of prompt reimbursement; and

(v) has and maintains capitalization fully adequate to meet its own commitments and those of its customers, including affiliates.

4-050.8

SUBPART D—CONTROL AND DIVESTITURE PROCEEDINGS

SECTION 225.31—Control Proceedings

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which—

(i) any of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) it otherwise appears that a company has the power to exercise a controlling influence over the management or policies of a bank or other company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company containing a statement of the facts upon which the preliminary determination is based.

4-050.9

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control or such longer period permitted by the Board, the company against whom the determination has been made shall—

(1) submit for the Board's approval a specific plan for the prompt termination of the control relationship;

(2) file an application under subpart B or C of this regulation to retain the control relationship; or

(3) contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

4-051

(c) *Hearing and final determination.* (1) The Board shall order a formal hearing or other appropriate proceeding upon the request of a company that contests a preliminary determination that the company has the power to exercise a controlling influence over the management or policies of a bank or other company, if the Board finds that material facts are in dispute. The Board may also in its discretion order a formal hearing or other proceeding with respect to a preliminary determination that the company controls voting securities of the bank or other company under the presumptions in paragraph (d)(1) of this section.

(2) At a hearing or other proceeding, any applicable presumptions established by paragraph (d) of this section shall be considered in accordance with the Federal Rules

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

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ATTORNEY GENERAL

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August 16, 1984

ATTORNEY GENERAL OPINION NO. 84- 84

The Honorable William W. Bunten
State Representative, 54th District
1701 W. 30th Street
Topeka, Kansas 66611

Re: Elections -- Corrupt Practices -- Contributions by Corporations; Holding Companies Not Carrying on the Business of a Bank

Synopsis: K.S.A. 25-1709 prohibits corporations carrying on the business of a bank from making contributions to political parties. As previously discussed in Attorney General Opinion No. 82-280, the "business of a bank" involves accepting deposits, allowing withdrawals, and paying interest on accounts. As a company which owns all or a portion of the stock of a bank is itself not engaged in the busines of banking, it is not subject to the prohibitions of the statute, and may make contributions to political campaigns or political parties, subject to applicable federal laws. Cited herein: K.S.A. 9-504, 9-505a, 9-701, K.S.A. 1983 Supp. 9-1101, as amended by L. 1984, ch. 48, §4, K.S.A. 1983 Supp. 25-1709, K.S.A. 25-1710, 2 U.S.C.A. §441b, 11 C.F.R. §§114.1, 114.2.

* * *

Dear Representative Bunten:

As State Representative for the 54th District, which is included within Shawnee County, you request our opinion on a question concerning K.S.A. 1983 Supp. 25-1709. That statute, which is contained in the Corrupt Practices section of the statutes con-

cerning elections, prohibits certain entities from making contributions to political campaigns or political parties. Among these entities are any "corporation carrying on the business of a bank." You inquire whether this language would prohibit a company which controls a bank through ownership of the bank's stock from making such contributions.

K.S.A. 25-1709 was enacted in 1911, and is one result of the progressive movement which ran strongly through Kansas and national politics of the time. See, e.g. Robert S. LaForte, Leaders of Reform, Kansas University Press (1974), ch. 7. Except for a technical amendment in 1982 (L. 1982, ch. 156) which removed a phrase which had been determined to be unconstitutional [Attorney General Opinion No. 78-214, citing First National Bank of Boston v. Belotti, 435 U.S. 765, 55 L.Ed.2d 707 (1978)], the statute has remained unchanged since that time. This has caused problems in interpretation on at least one previous occasion, where it was questioned whether savings and loan associations were included within the coverage of the statute. As savings and loan associations did not exist as such in 1911, it was necessary to look to the purposes of the statute, as well as the types of activities which savings and loan associations conduct. When this was done, it was concluded that, while not technically banks, such associations are "carrying on the business of a bank," and so should be included within K.S.A. 1983 Supp. 25-1709. Attorney General Opinion No. 82-280.

K.S.A. 1983 Supp. 25-1709 states:

> "No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas electric light, heat, power, or water company, or any company having the right to take or condemn land or to exercise franchises in public ways granted by the state or by any county or city, and no trustee or trustees owning or holding the majority of the stock of such corporation, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person to public office, or in order to aid, promote or antagonize the interests of any political party. No person shall solicit or receive such payment or contribution from such corporation or such holders of stock."

Violation of the above provisions is punishable by the civil penalties of K.S.A. 25-1710, which are set at maximum fines of

$10,000 and $1,000 for corporations and individuals, respectively. These statutes are clearly enacted for the protection of the public, for as Attorney General Opinion No. 77-230 noted:

> "All corporations conducting the businesses enumerated in (the) statute are traditionally subject to fairly close and pervasive public regulation. Their operations are directly affected by legislative and regulatory policy, and as a result they have a particularly keen economic interest in the political process. Presumably the 1911 legislation perceived that corporations in these regulated industries might seek to exercise untoward and oppressive influence on that process through the leverage of political contributions and chose to prohibit them entirely . . . ."

As such, even though containing civil penalties, the act containing K.S.A. 1983 Supp. 25-1709 should be liberally construed, and is not penal in nature. State ex. rel. Murray v. Palmgren, 231 Kan. 524, 530-31 (1982). To the extent that a prior opinion of this office contained at VII Opinions of the Attorney General, p. 535 (1972) differs in this conclusion, it is withdrawn.

If a company which owns all or part of the stock in a bank is to be covered by K.S.A. 1983 Supp. 25-1709, it must be concluded that either: (1) because of this control, the holding company is "carrying on the business of a bank" or (2) it falls under the prohibition against a "trustee" who owns or holds a majority of the stock of one of the included groups of corporations, i.e. a bank. If neither of these conditions is present, then a holding company would not be covered by the ban on contributions imposed by the statute. (Note: while a company which owns the stock of a bank is commonly referred to as a bank holding company, legally such an entity cannot exist in Kansas, given the wording of K.S.A. 9-504(a) and 9-505a. Therefore, we will refer in this opinion to "holding companies," which under Kansas law are allowed to own up to 100% of one bank and less than 25% of other banks.)

The question of whether stock ownership constitutes being a trustee has been previously discussed by an opinion of this office. In a letter dated September 1, 1972 to Representative Richard Loux, Attorney General Miller concluded that the word trustee did not include stockholders who held stock for their own benefit, stating:

> "The word 'trustee' in K.S.A. 25-1709 must, in our view, be given its ordinary meaning, to describe one holding a majority of shares in behalf of another. It does not refer, in our opinion, to a majority share holder who may be deemed a 'trustee' only with reference to the general fiduciary obligations owed to minority stockholders described above. Accordingly, it is our opinion that K.S.A. 25-1709 does not prohibit an individual, owning a majority of the shares of stock in one of the enumerated corporations in his own behalf and not as trustee for another, from making political contributions which are prohibited to the corporation itself." (VII Atty. Gen. Opin. No. 535.)

We concur with this conclusion, for a holding company possessing stock in a bank is an outright owner, and does not function as a trustee owing a duty to manage the equitable interest of another. Were such broader coverage desired, it could be included, as has been done in New Jersey, where a comparable statute provides that "no corporation, person, trustee or trustees owning or holding the majority of stock in any such corporation, shall pay or contribute . . ." (N.J.S.A. 19:34-45). While liberal construction is to be afforded to K.S.A. 25-1709, we do not believe that a court would read the statute broadly enough to include a holding company under the phrase "trustee or trustees owning or holding the majority of stock."

In our opinion, the question of whether a holding company is carrying on the business of a bank through its ownership of stock in a bank must also be answered in the negative. As noted above, Attorney General Opinion No. 82-280 concluded that because a savings and loan association had the powers of a bank (e.g. received deposits, permitted withdrawals and paid interest on accounts), it was carrying on the business of a bank so as to come within the scope of the statute. A holding company is engaged solely in the ownership of stock in a bank, as well as other, non-bank corporations, and does not possess the powers given to banks by Kansas statutes. K.S.A. 9-701, K.S.A. 1983 Supp. 9-1101, as amended by Laws 1984, chapter 48, section 4.

This conclusion is consistent with prior attorney general opinions construing this statute. In Opinion No. 77-116, Attorney General Schneider stated:

> "Under K.S.A. 25-1709, a parent corporation which owns a subsidiary which falls within the class of corporations prohibited from making contributions, but which itself does not carry on any of the businesses or exercise any of the privileges recited therein, is not prohibited from making political contributions by virtue of its stock ownership in such covered corporations. Similarly, a corporation which does not carry on any of such businesses, or exercise any of the specified privileges, is not prohibited from making contributions merely by ownership of its stock by a corporation which is covered by this section."

Again, while the legislature could by amendment bring holding companies under the scope of K.S.A. 1983 Supp. 25-1709, given the wording of the existing statute we do not believe that even a liberal construction of the present language can find that such companies are now included.

Despite our conclusion that holding companies are not within the scope of K.S.A. 1983 Supp. 25-1709, there exist federal statutes which also must be considered. As a matter of federal law, national banks are prohibited from making contributions or expenditures in connection with elections to political office at the local, state or national level. 2 U.S.C.A. §441b(a), 11 C.F.R. §§114.1(a), 114.2(a). However, holding companies organized under state law which own national banks may make contributions to state and local candidates, subject to state law. However, even where state law does not prohibit such contributions, as in Kansas, federal law imposes two conditions: (1) no funds may be contributed which are derived from the operations of the national bank; and (2) the contributions may not be made or used, directly or indirectly, in connection with a federal election. Federal Election Commission Advisory Opinion No. 1981-61, Federal Election Campaign Finance Guide (CCH), ¶5641 (February 5, 1982), Advisory Opinion No. 1891-49, supra, ¶5638 (January 29, 1982).

In conclusion, K.S.A. 25-1709 prohibits corporations carrying on the business of a bank from making contributions to political campaigns or political parties. As previously discussed in Attorney General Opinion No. 82-280, the "business of a bank" involves accepting deposits, allowing withdrawals, and paying interest on accounts. As a company which owns all or a portion of the stock of a bank is itself not engaged in the business of

banking, it is not subject to the prohibitions of the statute, and may make contributions to political campaigns or political parties, subject to applicable federal laws.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Jeffrey S. Southard

Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw

(attachment #2)

THE STATE OF KANSAS

BANKING DEPARTMENT
TOPEKA

EUGENE T. BARRETT, JR.
BANK COMMISSIONER

January 22, 1985

Honorable David G. Miller
State Capitol Building
Topeka, Kansas 66612

Dear Representative Miller:

Recently the Attorney General issued Opinion No. 84-84 which stated that although KSA 1983 Supp. 25-1709 prohibits a bank from making political contributions, a bank holding company is not engaged in the business of banking and may, therefore, make contributions to political campaigns or political parties.

You have requested my opinion of this interpretation of the laws governing political contributions. I believe the Attorney General has correctly interpreted the law as it now reads; however, I do not believe bank holding companies should be allowed to make political contributions. Although a holding company may not technically be in the business of a bank, it directly controls the bank's operation. In addition, the law currently favors banks owned by holding companies over banks not owned by such companies.

Should you have any questions regarding this information, or should you wish to discuss this matter further, do not hesitate to contact me.

Very truly yours,

Eugene T. Barrett, Jr.
Bank Commissioner

ETBjr:jly:jas

cc: File (1)

H. Elect. 2/12/85
(attachment #2)

(attachment)

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

SB 138

February 6, 1985

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

SENATE ELECTION COMMITTEE

Mr. Chairman and Members of the Committee:

My name is Jim Edwards and I am Director of Public Affairs for the Kansas Chamber of Commerce and Industry. I appear before you today to express our organization's support for SB 138.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses plus 215 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

SB 138 would repeal two statutes, both dealing with campaign contributions by regulated industries. These statutes are currently under the jurisdiction of the

H. Elect. 2/12/85
(attachment 3)

Attorney General's office.

Let us take just a few moments to look at the history of these laws. Both laws; KSA 25-1709, the statute which prohibits the contributions; and KSA 25-1710, the statute providing the penalties for the violation of KSA 25-1709; were put on the books in 1911. A period during which many of the businesses affected by the statute could have been said to have monopolistic control over their customers. These statutes probably made sense in 1911.

However, I'm sure that you will agree with me that times have changed. If you would have told a power company official in 1911 that in 1985 he might have competition in the source of wind generators or solar panels, he probably would have laughed. The telephone company would have laughed also if you mentioned the use of private micro wave systems or the proliferation of citizens band radios in recent years. Well, the above mentioned firms still don't have, and probably rightfully so, a truely competitive market. I would maintain though that some form of competition can be found for any of the mentioned businesses, some more than others.

Because of these changes, we also need to look at laws affecting these businesses in change. Almost all firms, except those mentioned in the statute, are allowed to make campaign contributions to the candidates of their choice. It is hard to understand why we continue to impose on businesses laws which are no longer realistic nor truly address the concerns. With this in mind, we urge the repeal of the two statutes, thereby allowing a method for campaign funding that is not presently available.

We do not anticipate that making these changes would have any impact on the customer. The change would be in the area of stockholder's equity or stockholder's dividends. Presently, a company probably uses the following to raise funds

for a company affiliated PAC: 1) they send a dividend check to their stockholders; 2) they write a letter to their stockholders asking for contributions; and, 3) they receive funding for their PAC. When this bill is passed, it will allow the management of the company to set aside a portion of the stockholder's equity for funding their affiliated PAC. Basically, we are talking about the exact same dollars. The only difference is the allocation.

In addition to the above, the KCC has given its intent for the future by preparing written policy which would continue the prohibition of inclusion of campaign contributions in above the line expenses for the rate base. Simply, utilities would be disallowed, from taking campaign contributions from anyplace but the stockholder's equity.

Changes have taken place and changes need to be made. Specifically, I urge your support of SB 138 and urge that it be passed allowing for the repeal of KSA 25-1709 and KSA 25-1710.

I appreciate the opportunity to present this testimony to you today.