Approved Clyde D. Graeber 3/1/88
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS

The meeting was called to order by Clyde D. Graeber at
Chairperson

3:30 ~~XXX~~/p.m. on February 25, 1988 in room 527-S of the Capitol.

All members were present except: Vice Chairman Dick Eckert and Bob Ott, Excused.

Committee staff present: Bill Wolff, Research Department
Myrta Anderson, Research Department
Bruce Kinzie, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Jim Todd, Kansas Firefighters Assn.
Jon Josserand, Assistant for Government Relations, The University of Kansas
Representative R. D. Miller
W. Newton Male, Bank Commissioner
Charles E. Thacker, Regional Director, Bank Supervision, Kansas City Region Federal Deposit Insurance Corporation

Chairman Graeber brought the meeting to order and stated there would be hearings on two bills, i.e., H.B. 2812 and H.B. 2892.

The hearing was opened on H.B. 2812, an act prohibiting the selling, offering for sale or purchase of items of clothing or equipment intended to protect firefighters which fail to meet certain minimum standards by the national fire protection association.

Jim Todd, Kansas Firefighters Association, was the first to testify for H.B. 2812 stating that the new lighter weight, fire resistant material is necessary for the protection of firefighters. Equipment and clothing meets or exceeds the minimum standards by the national fire protection association.

The next person to testify for H.B. 2812 was Jon Josserand, Assistant for Government Relations, The University of Kansas, stating that firefighters are trained at Kansas University and they support this bill (See Attachment #1).

After discussion, Representative Gatlin moved and Representative Roenbaugh seconded that H.B. 2812 be moved out of committee with an amendment inserting the word "knowingly" in Section 1. (a) and that line will read as follows: No person shall knowingly sell, offer for sale or purchase. The motion carried unanimously.

The next hearing was opened on House Bill 2892 which is an act relating to banks and banking; concerning loan loss amortization.

Representative R. D. Miller was the first to testify for the bill stating this legislation is needed for the banks in agricultural communities.

W. Newton Male was the next person to testify opposing the bill, stating that there are many meetings between the banks directors and the commissioner before a bank is closed (See Attachments 2 and 3).

Charles E. Thacker, FDIC, was the last conferee to oppose H.B. 2892 stating the depositors need protection. Further, the more loss that builds over a long time period, the less opportunity for the FDIC to arrange an orderly sale of the bank to another institution (See Attachment #4).

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL AND FINANCIAL INSTITUTIONS,

room 527-S Statehouse, at 3:30 ~~xx~~m./p.m. on February 25, 1988

The hearing was closed and final action will be taken Thursday, March 3, 1988.

The meeting was adjourned at 5:00 P.M.

Date: 2/25/88

GUEST REGISTER

NAME	ORGANIZATION	ADDRESS
LINDA McGILL	KIBA	TOPEKA
Jim Maag	KBA	"
Jon Josserand	KU	LAWRENCE
Steve Montes	IAFF LOCAL 83	TOPEKA
Dennis Phillips	IAFF Local 83	Topeka
James A Lockl	KSFFA	Wichita
Joe Thibodeau	Ks State f.f. Assoc	Lawrence
Tom Love		Kansas City
Mike Bomini	Local 64 KCKFD	KCK
Tom DeKeyser	KCKFRA	Kansas City Kansas
Bob NOWAK	KCKFRA	K C K
Walter Johnson	KCK-FRA	K. C. Kansas
Jerry Carroll	KSDCU	Topeka
Jerel Wright	KCUL	Topeka
W. Newton Male	KS. BANK. DEPT.	"

Date: 2/25/88

GUEST REGISTER

NAME	ORGANIZATION	ADDRESS
Mike Roe	FDIC	KC, Mo
Gerald L. Lambert	FDIC	Kc, Mo.
Charles E. Hucker	FDIC	KC, Mo
Judi M Stork	Ks Banking Dept	Topeka
Mike Heitman	✓	✓

The University of Kansas

Division of Continuing Education
Administrative Services

COPY

22 February 1988

The Honorable Clyde D. Graeber, Chairman
House Committee on Commercial and Financial Institutions
State Capitol Building, Room 175-W
Topeka, Kansas 66612

Dear Representative Graeber:

The University of Kansas, through its Division of Continuing Education, is mandated by K. S. A. 76-327 to conduct training throughout the State. We appear in strong suport of House Bill 2812.

We are, from time to time, asked to train firefighters, in situations requiring extinguishment of a live fire, who do not have protective clothing and equipment which would meet the standards established by the National Fire Protection Association and which are proposed for adoption by House Bill 2812. At present, we must refuse to permit these firefighters to participate in live fire training evolutions. Firefighting is a risky business at best; training firefighters necessarily involves some risk. However, such training should be and is conducted under the safest possible conditions which minimize the risks to the personnel involved.

However, it is simply not safe to expose a student firefighter who does not have full protective clothing which meets the standard for flame retardancy, who does not have a helmet (and a visor) which can withstand the heat to which it will be subjected in a fire, who does not have gloves which will not melt under heat, who does not have the proper self-contained breathing apparatus to protect the nose, throat, lungs and other air passages from hot gases and the other products of combustion which are suspended in the air to the hazards and potential for injury which they would encounter during live fire training. Also the exposure to liability risk for the State, the University of Kansas, and the instructors involved in this training is so high that prudence dictates that it must be avoided. Reluctantly, therefore, we have no choice but to decline to permit students without the proper equipment to participate in training exercises involving live fire situations.

This is not a pleasant decision to have to make. One of its consequences is that rookie firefighters do not get an opportunity to discover exactly what conditions they are likely to be facing until they are forced to face them in a real live fire as opposed to a controlled environment, where, for example, it would be possible to turn off the fire if things start to get too dangerous. Another consequence is that more experienced firefighters on departments who do not have to respond to a lot of fires and who are, in

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general, less prone to have protective clothing and equipment which would meet the standards, do not get the opportunity to practice their firefighting skills in order that their abilities will be ready to use when they are needed.

House Bill 2812 would, over time, ameliorate this situation by raising the general level of equipment used by the members of the fire service in Kansas. It definitely will improve our ability to train the Kansas fire service more effectively while at the same time reducing the exposure for liability of all who are involved in conducting this training. It should lower the overall injury and death rate because better trained and better equipped firefighters are less likely to be injured or killed.

Thank you very much for the opportunity to present our opinions on this important legislative matter. I hope that the Committee on Commercial and Financial Institutions will report this bill with a favorable recommendation for passage to the full House of Representatives.

Sincerely,

John P. Wolf
Assistant Dean

cc: Ann Victoria Thomas

JPW: me
88-053

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington DC 20429

OFFICE OF THE CHAIRMAN

February 25, 1988

Dear Mr. Chairman:

Thank you for providing the Federal Deposit Insurance Corporation with the opportunity to express its views on House Bill No. 2892. Charles E. Thacker, our Kansas City Regional Director, will be presenting the FDIC's testimony today.

The FDIC must express its strong oppostion to the provisions of House Bill No. 2892 since legislation such as this would be extremely costly to the FDIC. Any measure that perpetuates the existence of a clearly nonviable and insolvent bank necessarily results in increased losses to the Federal Deposit Insurance Fund. In addition, the measure would result in increased cost to the vast majority of Kansas banks that are healthy and viable only to benefit the shareholders and management of a very few, nonviable, Kansas banks. Furthermore, it actually could disadvantage Kansas communities as the potential for greater losses increases the likelihood that the FDIC would have to pay off depositors rather than arrange a less disruptive solution.

Thus, we strongly oppose House Bill No. 2892 and urge the Kansas legislature to reject this measure. Please let me know if we can be of any further assistance towards this end.

With best wishes.

Sincerely,

L. William Seidman
Chairman

Honorable Clyde Graeber
Chairman, Commerical and
Financial Institutions Committee
House of Representatives
State Capital Building
Topeka, Kansas 66612

FEB 25 '88 12:01 63/R IN P02

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TESTIMONY BEFORE

COMMERCIAL AND FINANCIAL INSTITUTIONS COMMITTEE

OF THE HOUSE OF REPRESENTATIVES

STATE CAPITAL BUILDING

TOPEKA, KANSAS

BY

CHARLES E. THACKER

REGIONAL DIRECTOR, BANK SUPERVISION

KANSAS CITY REGION

FEDERAL DEPOSIT INSURANCE CORPORATION

FEBRUARY 25, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE I APPRECIATE SINCERELY THE OPPORTUNITY TO PRESENT THE VIEWS OF THE FDIC ON HOUSE BILL NO. 2892. FDIC CHAIRMAN L. WILLIAM SEIDMAN IS VERY MUCH AWARE OF THIS BILL AND, AS HIS ATTACHED LETTER SHOWS, HAS STATED HIS STRONG OPPOSITION TO IT.

HOUSE BILL NO. 2892 WOULD ALLOW A BANK A 6-MONTH STAY FOLLOWING DENIAL OF AN APPLICATION FOR LOAN LOSS DEFERRAL BY FDIC. THE BILL ADVANCES THE ASSUMPTION THAT THIS 6-MONTH PERIOD WOULD SOMEHOW ALLOW A BANK TIME TO CORRECT ITS PROBLEMS. I WOULD LIKE TO OFFER SOME COUNTER POINTS.

THE FEDERAL DEPOSIT INSURANCE FUND IS INTENDED TO PROMOTE CONFIDENCE IN THE BANKING SYSTEM, AND PROTECT INDIVIDUAL DEPOSITORS. THE FUND COVERS OVER 14,000 BANKS NATIONALLY WHICH FINANCIALLY SUPPORT IT AND IS AFFECTED DIRECTLY BY BANK FAILURES AND ENSUING LOSSES.

HISTORY HAS PROVEN THAT PERMITTING BANKS WITH NO VIABILITY TO OPERATE FOR LONGER PERIODS OF TIME INCREASES LOSSES TO THE DEPOSIT INSURANCE FUND, AND THEREFORE UNDERMINES CONFIDENCE IN THE ENTIRE BANKING STRUCTURE. THESE INCREASED LOSSES MUST BE BORNE BY OTHER BANKS, AND IN TURN, CONSUMERS OF BANKING SERVICES. HISTORY ALSO SHOWS THAT SUCH BANKS ARE PRONE TO IRRATIONAL BEHAVIOR, COMPETE UNFAIRLY, AND COULD BRING HARM TO OTHER BANKS.

NONVIABLE OR INSOLVENT BANKS HAVE EITHER SEVERELY DIMINISHED OR NONEXISTENT LENDING AUTHORITY AND THEREFORE CANNOT CONTRIBUTE TO THE FINANCIAL SUPPORT OF THEIR COMMUNITIES. FURTHER, THE MORE LOSS THAT BUILDS OVER TIME THE LESS CHANCE FOR FDIC TO ARRANGE AN ORDERLY TRANSFER TO ANOTHER INSTITUTION. A DEPOSIT PAY-OFF BECOMES MORE LIKELY, AND A DEPOSIT PAY-OFF GENERALLY LEAVES A SMALL ONE-BANK COMMUNITY WITH NO BANKING SERVICES.

HOUSE BILL NO. 2892 WOULD NOT BE BENEFICIAL TO THE FINANCIAL INDUSTRY AS A WHOLE BUT OFFERS AN UPSIDE TO ONLY THE SHAREHOLDERS AND MANAGEMENT OF A MINISCULE NUMBER OF BANKS.

THE DIRECTORS OF BANKS WHICH CONTINUE TO OPERATE IN AN INSOLVENT CONDITION MAY BE EXPOSING THEMSELVES TO ADDITIONAL PERSONAL LIABILITY.

LASTLY, HOUSE BILL NO. 2892 WOULD REQUIRE THAT, IN ORDER TO PROTECT THE DEPOSIT INSURANCE FUND AND THE BANKING INDUSTRY, THE FDIC WOULD HAVE TO CURTAIL COOPERATIVE, INFORMAL SOLUTIONS TO MORE SERIOUS PROBLEMS AND RESORT TO MORE EXTREME REGULATORY MEASURES, I.E., CEASE AND DESIST ORDERS AND TERMINATIONS OF DEPOSIT INSURANCE, MUCH EARLIER IN THE PROCESS THAN IS NOW THE CASE.

SINCE JANUARY 1, 1984 DIRECT FINANCIAL ASSISTANCE HAS BEEN PROVIDED TO 28 BANKS NATIONWIDE; FOUR OF THESE WERE KANSAS BANKS.

SINCE INCEPTION OF THE CAPITAL FORBEARANCE PROGRAM IN MARCH, 1986, 29 KANSAS BANKS HAVE APPLIED TO FDIC FOR ACCEPTANCE INTO THE PROGRAM. THUS FAR, WE HAVE ACTED UPON 20 APPLICATIONS--18, or 90% HAVE BEEN APPROVED.

THE AGRICULTURAL LOAN LOSS DEFERRAL PROGRAM BEGAN IN NOVEMBER 1987. TO DATE, EIGHT KANSAS BANKS HAVE APPLIED TO FDIC. ALTHOUGH MOST OF THESE APPLICATIONS ARE VERY RECENT AND STILL IN THE PROCESS OF REVIEW, THREE HAVE BEEN ACTED UPON--TWO WERE APPROVED AND ONE WAS DENIED BECAUSE THE BANK WAS NOT CONSIDERED TO HAVE A REASONABLE CHANCE TO OVERCOME ITS INSOLVENCY AND LACK OF EARNINGS.

THE MANAGEMENTS OF BANKS WITH SIGNIFICANT PROBLEMS GENERALLY HAVE BEEN AWARE OF THEIR PROBLEMS FOR A LONG PERIOD OF TIME. EVERY EFFORT IS MADE ON OUR PART TO COME TO A REASONABLE RESOLUTION OF THE PROBLEMS WITH THOSE BANKS. DENIALS OF EITHER CAPITAL FORBEARANCE OR LOAN LOSS DEFERRAL APPLICATIONS ARE DECIDED ONLY AFTER WE ARE THOROUGHLY CONVINCED THAT THE APPLICANT CANNOT DEMONSTRATE POTENTIAL VIABILITY. IN THOSE SITUATIONS WHERE SUCCESS IS QUESTIONABLE, BUT THERE APPEARS AT LEAST A REASONABLE CHANCE, WE OPT TO APPROVE THE APPLICATION. FOR THE MOST PART, THOSE BANKS THAT HAVE FAILED IN KANSAS HAVE BEEN OF CONCERN TO THEIR REGULATORS FOR MANY MONTHS. DURING THAT TIME THE REGULATORS HAVE WORKED WITH THEM IN ORDER TO FIND A SOLUTION TO THE PROBLEMS. FAILURE OCCURS ONLY AFTER IT WAS DETERMINED THAT THERE WAS NO REASONABLE SOLUTION.

IN SUMMARY A CONSIDERABLE PERIOD OF TIME AND PLANNING IS NOW PROVIDED TO ANY BANK WHICH IS EXPERIENCING SIGNIFICANT CAPITAL PRESSURES.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE -

I AM NEWTON MALE, BANK COMMISSIONER FOR THE STATE OF KANSAS, REPRESENTING THE KANSAS BANKING DEPARTMENT AND THE STATE BANKING BOARD. THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU THIS AFTERNOON REGARDING H.B. 2892. MY VIEWPOINT WILL BE ONE OF OPPOSITION.

WE REALIZE THAT THIS LEGISLATION CAME ABOUT WITH GOOD INTENTIONS; HOWEVER, IT IS OUR OPINION THAT ADEQUATE LEGISLATION IS ALREADY IN PLACE THAT GRANTS THE OFFICE OF THE STATE BANK COMMISSIONER SUFFICIENT FLEXIBILITY IN WORKING WITH A FAILING INSTITUTION TO EXHAUST ALL VIABLE AVENUES OF AVOIDING AN ULTIMATE FAILURE OF THE INSTITUTION.

AS A PART OF ITS REGULAR MEETING, THE STATE BANKING BOARD, ON FEBRUARY 15, 1988, CONSIDERED THE RAMIFICATIONS OF THE PROPOSED BILL. I WOULD LIKE YOU TO BE AWARE THAT THE STATE BANKING BOARD IS COMPRISED OF NINE MEMBERS, WITH VARIED AND DIVERSE GEOGRAPHICAL AND OCCUPATIONAL REPRESENTATION. SIX OF THE NINE MEMBERS ARE BANKERS AND THREE ARE INDIVIDUALS SUCCESSFUL IN THEIR OWN PRIVATE PROFESSIONS.

THE BOARD'S OPINION, WHICH I ALSO SHARE, IS EXPRESSED IN THE LETTER DATED FEBRUARY 25, 1988, WHICH HAS BEEN DISTRIBUTED TO YOU. EACH OF THE SEVEN POINTS IN THE LETTER ARE ONES THAT WOULD BE EFFECTED BY THE PROPOSED LEGISLATION AND, AT THIS TIME, I INTEND AND WOULD LIKE TO BRIEFLY ADDRESS EACH ITEM.

THE BANKING SYSTEM AND ITS REGULATIONS ARE IN PLACE TO PROVIDE FOR AND PROTECT DEPOSITORS, NOT TO PERPETUATE POORLY MANAGED BANKS. THE LEGISLATION NOW PROPOSED WOULD SEEM TO UNDER MINE THE STRONG CONFIDENCE THE PUBLIC HAS IN THE BANKING SYSTEM BY INCREASING THE RISK TO THE DEPOSITOR. KANSAS BANKING LAWS PRESENTLY REQUIRE THE BANK COMMISSIONER TO IMMEDIATELY TAKE CHARGE OF A BANK THAT APPEARS INSOLVENT AND TO APPOINT A RECEIVER IF IT IS DETERMINED THAT SUCH A BANK CANNOT RESUME BUSINESS OR LIQUIDATE ITS INDEBTEDNESS TO THE SATISFACTION OF ITS DEPOSITORS OR CREDITORS.

IN ANY BUSINESS VENTURE IN AMERICAN TRADITION, IT IS A REQUIREMENT THAT INVESTORS PROVIDE FUNDS, (CAPITAL), WHICH REPRESENTS THEIR RISK EXPOSURE IN CONTINUING THE OPERATION OF THE BUSINESS. WHEN AUTOMOBILES AND HOMES ARE

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PURCHASED, THE INDIVIDUAL(S) ARE REQUIRED TO PROVIDE A DOWNPAYMENT. WHEN BUSINESSES ARE ESTABLISHED, THE ORGANIZERS MUST INJECT A CERTAIN AMOUNT OF CAPITAL. WHEN THAT INITIAL CAPITAL INVESTMENT ERODES TO A POINT OF BEING ELIMINATED ENTIRELY, OR EVEN BEYOND THAT LEVEL, THE BUSINESS, NO MATTER WHAT KIND, IS CONSIDERED INSOLVENT BECAUSE OF THE FACT THAT THE ASSETS OF THE ORGANIZATION CAN NO LONGER FULLY COMPENSATE ITS LIABILITIES. BANKING IS NOT AN EXCEPTION TO THIS TRADITION AND ANY LEGISLATIVE MOVE TO TRANSFER THE MONETARY RISKS OF OPERATION FROM THE INVESTOR TO THE DEPOSITOR WOULD APPEAR TO INAPPROPRIATELY ELIMINATE ANY DIFFERENCES EXISTING BETWEEN BANK DEPOSITOR AND BANK INVESTOR.

THE IMPLICATIONS OF H.B. 2892 ARE THAT A BANK, IF MEETING THE QUALIFICATIONS OF A TRADITIONAL INSOLVENT CONDITION, WOULD NOT BE SUBJECT TO REGULATORY PROCEDURES THAT EVOLVED OVER A PERIOD EXCEEDING 50 YEARS. THE BILL WOULD ALLOW AN INSOLVENT INSTITUTION TO CONTINUE OPERATION BY PERMITTING ITS MANAGEMENT TO REFLECT CAPITAL ON ITS FINANCIAL STATEMENTS THAT IS REPRESENTED, PURELY, BY LOANS THAT ARE CONSIDERED UNCOLLECTIBLE BY ITS REGULATORY AGENCY. IT WOULD PROHIBIT THE COMMISSIONER FROM CLOSING A BANK WHEN IT COULD NO LONGER MEET THE DEPOSIT WITHDRAWAL REQUEST OF ITS CUSTOMERS AND WOULD ALSO PERMIT A BANK TO " STALL" AN ULTIMATE FAILURE SIMPLY BY MAKING APPLICATION TO THE REGULATORY AGENCIES. THIS STALLING TACTIC COULD POSSIBLY ALLOW AN INSOLVENT BANK TO OPERATE FOR A TIME PERIOD NEARING A FULL YEAR. THROUGHOUT THIS TIMEFRAME, THE ORIGINAL BANK INVESTOR IS WITHOUT FINANCIAL RISK. THE RISK HAS SHIFTED TO THE DEPOSITOR AND THE REGULATOR.

AS I MENTIONED EARLIER, IT IS MY POSITION, AND THAT OF THE STATE BANKING BOARD, THAT REGULATIONS, ALREADY IN PLACE, GIVE BANK INVESTORS EVERY REASONABLE CHANCE TO RESOLVE THEIR AILMENTS. THE PUBLIC IS PROCEDURALLY NOT MADE AWARE OF ALL THE PREPARATION AND CONSULTATION THAT GOES HAND-IN-HAND WITH THE ANNOUNCED CLOSING OF A BANK AND THE PROCESS IS NOT ONE THAT MERELY SPANS THE COURSE OF A WEEK, BUT, ONE THAT, MOST OFTEN, TRANSPIRES OVER A PERIOD OF MONTHS. BANKS THAT HAVE REACHED AN APPARENT INSOLVENCY HAVE USUALLY DONE SO

OVER AN EXTENDED PERIOD OF TIME AND HAVE NORMALLY ALREADY BEEN IDENTIFIED AS "PROBLEM BANKS" BY REGULATORY AGENCIES. ONGOING CORRESPONDENCE AND AGREED UPON MEETINGS ARE CONDUCTED WITH THESE INSTITUTIONS OVER THE COURSE OF YEARS; THE PRIMARY GOAL BEING RESTORING THE CONDITION OF THE BANK TO ONE FREE OF OUR CONCERN. IN THE EVENT MANAGEMENT IS UNWILLING OR UNABLE TO EFFECT THE NECESSARY IMPROVEMENTS, FORMAL AND INFORMAL AGREEMENTS ARE ENTERED INTO. THESE AGREEMENTS ALMOST ALWAYS ADDRESS THE ISSUE OF MINIMUM CAPITAL LEVELS TO BE MAINTAINED.

THE CONTINUED UNWILLINGNESS OR INABILITY OF MANAGEMENT TO MEET THE REQUIREMENTS OF THESE AGREEMENTS IS USUALLY REVEALED THROUGH LEGISLATIVELY MANDATED EXAMINATIONS OF THE INSTITUTIONS. ONCE SUCH AN EXAMINATION REVEALS AN INSOLVENT CONDITION, STATUTORY REQUIREMENTS MUST BE ENFORCED. ONCE AN INSOLVENT CONDITION IS REVEALED TO THE BANK COMMISSIONER, HE/SHE IS REQUIRED, BY STATUTE, TO TAKE CHARGE OF THE BANK AND ACCEPT ALL LIABILITY ASSOCIATED WITH ITS OPERATION. THE BANK'S BOARD IS MET WITH, ON ONE MORE OCCASION, TO DISCUSS ANY PLAN TO AUGMENT THE BANK'S CAPITAL. ONLY WHEN THERE IS NO OTHER OPPORTUNITY TO RESOLVE THE INSOLVENCY IS THE INSTITUTION CLOSED.

IN AN INSOLVENT MODE, THE FDIC IS APPOINTED AS RECEIVER. EVERY EFFORT IS EXPENDED IN MARKETING THE INSOLVENT INSTITUTION PRIOR TO ITS ANNOUNCED CLOSING. IN MOST EVERY INSTANCE, THE FDIC AND THE STATE BANKING DEPARTMENT HAS BEEN SUCCESSFUL IN FINDING A QUALIFIED PURCHASER FOR THE INSOLVENT BANK THAT RESULTS IN A NEW FINANCIAL INSTITUTION OPENING ITS DOORS FOR OPERATION THE VERY NEXT BUSINESS DAY. OF THE ELEVEN BANKS CLOSED IN KANSAS IN 1987, AND SO FAR IN 1988, NINE HAVE REOPENED THE VERY NEXT DAY WITH AN EVEN STRONGER FINANCIAL INSTITUTION, THEREBY, BETTERING THE ECONOMY OF THE COMMUNITY. THREE STATE BANKS IN KANSAS HAVE VERY RECENTLY AVOIDED FAILURE DUE TO OUR WILLINGNESS TO WORK WITH VIABLE INSTITUTIONS. BECAUSE OF THIS EXCELLENT RECORD OF PERFORMANCE, PUBLIC CONFIDENCE IN THE BANKING INDUSTRY HAS BEEN PRESERVED, EVEN WHEN PUBLICATIONS OF INSOLVENCY ARE REQUIRED AND MADE PRIOR TO A BANK'S CLOSING.

HOWEVER, THE CONTINUED OPERATION OF AN INSOLVENT BANK, FOR A PERIOD THAT COULD SPAN CLOSE TO A YEAR, WOULD POSTPONE THE APPOINTMENT OF FDIC AS THE RECEIVER AND WOULD REDUCE OR POTENTIALLY ELIMINATE THEIR ABILITY TO FIND A BUYER FOR THE INSTITUTION. IN ADDITION, THE BANK'S ABILITY TO SERVICE THE COMMUNITY DURING THIS TIMEFRAME WOULD BE SEVERELY RESTRICTED DUE TO THE REDUCTION IN THE LEGAL LENDING LIMIT OF AN INSOLVENT INSTITUTION. AN INSOLVENT BANK HAS NO LENDING LIMIT AND COULD NOT SERVE AS A VIABLE LENDER FOR ITS COMMUNITY. FURTHERMORE, EXISTING BANKING STATUTES PROHIBIT AN INSOLVENT BANK ACCEPTING DEPOSITS AND ESTABLISHES CRIMINAL PENALTIES FOR SUCH ACTIONS.

UNDER PRESENT LAW, THE STATE ACCEPTS ALL LIABILITY OF AN INSOLVENT BANK FOR WHICH IT HAS TAKEN CHARGE. H.B. 2892 DOES NOT CONTAIN PROVISIONS FOR WHO IS LIABLE DURING THE APPLICATION PROCESS, BUT DOES REMOVE ALL FINANCIAL RISK FROM THE BANK INVESTOR AND PLACES IT IN THE HANDS OF THE DEPOSITOR AND THE REGULATORY AGENCIES.

THE PROPOSED LEGISLATION RAISES MORE QUESTIONS, IN RELATION TO EXISTING REGULATIONS, THAN IT SOLVES. IT THREATENS THE CORNERSTONE OF MAINTAINING THE DEPOSITORS' AND THE PUBLIC'S CONFIDENCE IN THE BANKING SYSTEM.

AGAIN, THANK YOU FOR THE OPPORTUNITY TO APPEAR THIS AFTERNOON. I WILL BE PLEASED TO TRY TO ANSWER ANY QUESTIONS SHOULD YOU HAVE THEM.

STATE OF KANSAS

W. Newton Male
Bank Commissioner

Michael D. Heitman
Deputy Commissioner

OFFICE OF

BANKING DEPARTMENT

TOPEKA

February 25, 1988

The Honorable James D. Braden
Speaker of the House
State House
Topeka, Kansas 66612

Re: H.B. 2892

Dear Representative Braden:

As Chairman of the State Banking Board, I am writing to express the Board's opposition to H.B. 2892.

The referenced bill was discussed and considered as a part of the Board's February 15, 1988 regular meeting; six of the nine members were present and participated in the discussion. It was the unanimous findings of the members present to oppose H.B. 2892. Concerns identified by the Board include:

1. The proposed legislation could undermine the strong confidence the public has in the banking system by increasing the risk to the depositor. Kansas law presently requires the Bank Commissioner to immediately take charge of an apparently insolvent bank and to appoint a receiver if it is determined that said bank cannot resume business or liquidate its indebtedness to the satisfaction of its depositors and creditors. The Commissioner may utilize a Special Deputy to control and supervise the affairs of the failing bank up to six months.

   Forty-five banks have closed in Kansas in the past four years; in only one instance was the closing accelerated because of a depositor "run" on the bank. In several instances, banks have published call reports disclosing negative capital accounts. Yet, even knowing the condition of the bank, the public displays a calm confidence in a system which they know is designed to protect the depositing public. The depositor supplies approximately 90% of the resources of a bank; without their confidence and participation, the system would collapse.

2. The decision to close a bank is made only after it is determined that there is no other available opportunity to resolve the insolvency. The Bank Commissioner, prior to closing a bank, gives the bank's board of directors the opportunity to present their comments regarding the condition of the bank and to discuss any plan to augment capital. The bank is only closed when there is no

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reasonable plan to recapitalize.

3. The Bank Commissioner and the Federal Deposit Insurance Corporation attempt to sell the failed bank to new investors. When the decision is made by the Commissioner to close a bank, a list of potential buyers is prepared which will be contacted in an effort to identify a group or groups with the necessary capital and management to revitalize the failed bank. Additionally, attempts are made to sell all the loans of the failed bank to the purchaser.

4. The proposed legislation would allow poorly managed banks the opportunity to postpone the appointment of a receiver potentially resulting in an unnecessary dissipation of the bank's customer base. An unnecessary delay in ascertaining a resolution of an insolvent bank's financial standing may reduce or eliminate the ability of the receiver to find a buyer of the failed bank. Hence, an unnecessary delay may actually serve only to reduce the possibility of maintaining banking services in the community. An insolvent bank has no loan limit; how long could credit worthy customers be expected to maintain their loan account with an insolvent bank?

5. The continued operation of an insolvent bank increases the risk of loss to the depositor and to the Federal Deposit Insurance Corporation. If the proposed legislation is passed, no doubt the FDIC would initiate the action to remove deposit insurance much sooner than they presently do. It is not reasonable to expect an insurance company to provide coverage when no one shares in the risk. Additionally, the State of Kansas may be assuming the liability to an uninsured depositor who creates or increases an uninsured deposit during the period of time the Commissioner is prohibited from appointing a receiver.

6. The legislation would prohibit the Commissioner from closing a bank when it could no longer meet the deposit withdrawal requests from its customers. If depositors could not receive their funds upon request and the Commissioner was prohibited from immediately appointing a receiver, chaos would result and the confidence in the Kansas banking system would be seriously threatened.

7. Kansas law, K.S.A. 9-1915 and 9-2010, prohibits an insolvent bank from accepting deposits and establishes criminal penalties for such actions. These statutes significantly underscore the importance historically placed upon maintaining the financial integrity of the banking system. This emphasis is deemed the cornerstone of maintaining public confidence and should not be weakened.

This response outlines the general concerns of the State Banking Board and the basis for its opposition. If any clarification or additional information pertaining to the these comments is desired, please contact the State Bank Commissioner, Jayhawk Tower, 700 Jackson, Suite 300, Topeka, Kansas 66603.

Sincerely,

Edward J. Costello

Edward J. Costello
Chairman

EJC:MDH:dsl

cc: Representative Clyde D. Graeber