

Approved February 25, 1988  
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

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

9:00 a.m./~~p.m.~~ on February 24, 1988 in room 529-S of the Capitol.

All members were present except:

Sen. Gannon - Excused

Committee staff present:

Bill Wolff - Legislative Research  
Bill Edds - Revisor of Statutes

Conferees appearing before the committee:

Bill Sneed, American Infestors Life Insurance Company  
Ron Todd, Kansas Insurance Department  
W. Newton Male, State Banking Department

The minutes of February 23 were approved.

The hearing began on SB 642 concerning extraordinary dividends which had been introduced at the request of American Investors Life Insurance Co. Bill Sneed of American Investors Life testified in support of it. (See Attachment I.) The Chairman clarified with Mr. Sneed that the purpose of the bill is to allow American Investors Life to issue dividends out of surplus money, and those would be called extraordinary dividends rather than dividends paid out of current income.

Sen. Werts asked where the extra money came from. Mr. Sneed answered that it came from the issuance of additional stock and the issuance of a debenture of the parent company which grants a contribution down to the insurance company which goes to surplus. A short discussion followed about other possibilities for handling the money rather than requesting this bill, but they were not satisfactory.

Sen. Reilly asked if this bill would provide some tax advantage to American Investors. Mr. Sneed said it would to some extent. The Chairman asked what the procedure would be when the parent company would reach having more surplus than needed. Mr. Sneed explained that the money could go down to the insurance company or stay there. Also, it could be made payable to the stockholders. Sen. Karr began a discussion of how the money can be legally paid to stockholders. It was determined that this bill would allow them to pay the stockholders. With reference to Mr. Sneed's statement in the last page of his written testimony, Sen. Kerr asked how this bill is "in the best interest of the policyholders" when the stockholders are already at their best. Mr. Sneed responded that if the parent company is allowed to do this, it will become an A+ insurance company which would generate more profit in the insurance company. Sen. Kerr then asked Mr. Sneed if this is the reason that at the present his company is not passing down as much money as it could (it would be one way with no way to transfer it back to the parent company). Mr. Sneed was in agreement that is the reason, but with the bill, it wouldn't be one way.

Sen. Werts questioned if this would be taxable money. Mr. Mark Heitz, also of American Investors, answered that it would not be taxable with a brief explanation and also addressed some of the other questions that had been raised by the committee. He gave reasons why his company could not accomplish the same thing as in the bill if there was a provision for a special class of debt that could be used for chartering a subsidiary life company to allow a channel between the life and holding company to pass money which was suggested by Sen. Werts.

Ron Todd, Kansas Insurance Department, said the Department has no problems with the bill. There is no chance of endangering policyholders because the Department has approval of extraordinary dividends. The concluded the hearing on SB 642.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE,  
room 529-S Statehouse, at 9:00 a.m./~~p.m.~~ on February 24, 1988.

Attention was turned to SB 676 which was introduced at the request of the Bank Commissioner's Office and deals with giving the FDIC authority to pay taxes which have not been paid prior to a state bank's insolvency. W. Newton Male, State Banking Department, testified in support of the bill. He distributed copies of a letter from FDIC which explains the bill. (See Attachment II.)

The Chairman had questions about whether or not taxes are paid on a pro-rated basis when the FDIC takes over. Mr. Heitman, also of the Banking Department, said that taxes due before FDIC takes over would probably be considered as an unsecured creditor, but with this bill, it would move up to being a secured creditor. Sen. Werts felt the bill should be changed to make clear how property tax is to be handled. A discussion followed as to if a penalty on unpaid taxes should have to be paid by FDIC. The Chairman felt they shouldn't. Mr. Male reminded the committee that FDIC is seeking guidance on this, not an escape from paying taxes. Further discussion followed about tax obligation. Staff informed the committee that the only penalty in the property tax area is for failure to list property, none for late payment. A short discussion followed regarding the insolvency situation and taxes, and it was decided that the bill is alright as it is. This concluded the hearing on SB 676.

On a call for a vote on SB 676, Sen. Strick made a motion to report it favorable for passage, Sen. Gordon seconded, and the motion carried.

On a call for a vote on SB 642, Sen. Kerr made a motion to report it favorable for passage, Sen. Harder seconded, and the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS  
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2/24	JOE A. MORRIS	TOPEKA	KLSI
"	RON TODD	"	INS. DEPT.
"	HURT SCOTT	"	INS. DEPT.
"	Jim Clinch	"	Prof Bus Agts
"	LARRY MAGILL	"	IIAK
"	W. Newton Male	"	STATE BANK. DEPT.
"	Mike Heitman	"	"
"	William W Sneed	"	American Investor Life
"	MARK V. HEITZ	"	American Investor Life
"	Frederic De Weller	Mr. Phos	Alliance Ins. Co.
"	Thomas O Brown	"	" " "

M E M O R A N D U M

TO : The Honorable Neil Arasmith  
Chairman, Financial Institution and Insurance  
Committee

FROM : William W. Sneed

RE : Senate Bill 642

DATE : February 24, 1988

On behalf of American Investors Life Insurance Company, please accept this memorandum as our testimony in support of favorable passage of Senate Bill 642. As you are aware, we requested the introduction of Senate Bill 642 to amend the Kansas Insurance Holding Company Act found at K.S.A. 40-3306.

Prior to 1974, K.S.A. 40-233 provided the statutory authority relative to insurance companies issuing dividends. This law was passed during the 1920's, and has basically remained unchanged since that point in time. During the 1970's, it became obvious to the Kansas Insurance Department and to the legislature that there was a need for regulatory guidance over insurance holding companies. Holding companies are corporate entities which own either 100% or the majority of control of an insurance company. Effective July 1, 1974, the Kansas Insurance Holding Company Act was passed by the Kansas legislature, and since then has remained basically the same. Amendments to the Holding Company Act have been made, but normally these changes have dealt with technical

Attachment I

revisions usually brought about by changes in various corporate laws.

The amendment before the Committee would amend the section which deals with extraordinary dividends. Again, the statute relating to insurance company dividends is found at K.S.A. 40-233, and the section dealing with insurance holding company dividends is found at K.S.A. 40-3306. During the last year, my client became aware of a possible conflict between the two named statutes. It had been the belief of my client that in relationship to dividends dealing with the holding company, K.S.A. 40-3306 would apply. However, in conferring with the Kansas Insurance Department, it is their opinion that not only would K.S.A. 40-3306 apply, but any dividends in relationship to the insurance company and its holding company would have to comply with K.S.A. 40-233.

The amendment before you would allow an insurance company to declare and pay a dividend, SUBJECT TO THE KANSAS INSURANCE DEPARTMENT'S APPROVAL, notwithstanding whether or not such dividend request would comply with K.S.A. 40-233.

Although at first glance it would appear that we are trying to avoid regulation, we are, to the contrary, trying to comply with the holding company statute. Because funding mechanisms within a holding company system are different than the funding found only within an insurance company, the holding company system needs the ability to, with the Department's approval, be able to declare dividends

when the insurance company might not normally be able to declare such dividends under K.S.A. 40-233.

K.S.A. 40-233 states that dividends can only be paid from funds arising out of surplus profits of the insurance company. If you are dealing solely with an insurance company, such regulatory provisions are applicable and straightforward. However, when dealing with a holding company system, the insurance company may have a limited amount of "surplus profits" available, but would have additional undivided surplus which a non-holding company insurance company might not have available. Thus, if an insurance company within a holding company system does in fact have these funds available, we are simply requesting the ability to make application to the Kansas Insurance Department, demonstrate that the funds are available, and request the issuance of such a dividend. Once again, these funds would not endanger that surplus which is utilized for the benefit of the policyholders. Although a term of art, such funds are more like undivided profits that you would normally find in a non-insurance company corporation.

Thus, on behalf of my client, we respectfully suggest that such an amendment is in the best interest of the policyholders. We base this conclusion on the fact that the ability to issue such dividends makes the parent holding company more marketable, and as such, increases its value.

Thus, as the parent company increases its value, so does the insurance company.

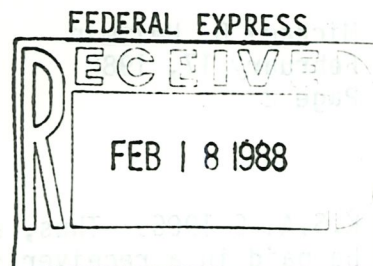
Again, on behalf of my client, we wish to thank you for the opportunity to present this material, and would be happy to answer any questions at your request.

Respectfully submitted,

GEHRT & ROBERTS, CHARTERED

William W. Sneed

February 17, 1988



Michael D. Heitman  
Deputy Commissioner  
Kansas Banking Department  
700 Jackson  
Suite 300  
Topeka, Kansas 66603-3714

Dear Mr. Heitman:

RE: Payment of Real and Personal Property Taxes

You have asked for a brief synopsis of the problem facing the Federal Deposit Insurance Corporation (FDIC) when real and personal property taxes owed to the Kansas taxing authorities have not been paid prior to a state bank failure. As noted in our previous conversations, the problem has been addressed from various perspectives but has not been resolved to the point where all parties concerned are comfortable with the remaining ambiguities.

First, I should note that property taxes which accrue from the date a bank fails are clearly "costs and expenses of the receivership" under K.S.A. 9-1906(b). A substantial amount of legal precedent supports this position. Legal precedent also indicates that payment of the tax claims which are secured by a lien is required where the value of the property meets or exceeds the amount of the tax. Thus, the property tax problem faced by FDIC as receiver in Kansas is the situation where a state bank fails prior to the attachment of a lien for failure to pay property taxes legally assessed.

Generally speaking, a lien for unpaid real property taxes attaches on November 1 of the year in which property taxes were assessed. K.S.A. § 79-1804. A judgment lien attaches on October 1 for unpaid personal property taxes provided that the procedures found in K.S.A. §§ 79-2017 and 79-2101 are carried out.

Given that K.S.A. § 9-1910 prohibits attachment of a lien against the property of the estate once the banking commissioner's notice has been posted on the door of the failed bank, any outstanding claim owed at the time the bank fails must be paid according to the priorities set forth in

Attachment II

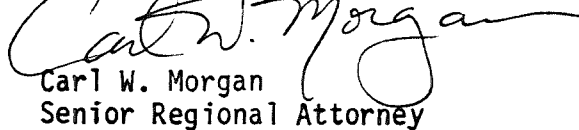


Michael D. Heitman  
February 17, 1988  
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K.S.A. 9-1906. Thus, any outstanding tax which has not become a lien would be paid in a receiver's certificate and the authorities would wait in line behind (1) "costs and expenses of the receivership," (2) "claims which are secured or given priority by applicable law," and (3) "claims of secured depositors." K.S.A. § 9-1906(b)

Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Carl W. Morgan". The signature is written in black ink and is positioned above the typed name and title.

Carl W. Morgan  
Senior Regional Attorney

cc: E. Glion Curtis  
Regional Counsel  
Kansas City Regional Office