Approved Clyde D. Graeber 3-23-89
Date

MINUTES OF THE HOUSE COMMITTEE ON Commercial & Financial Institutions.

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

3:30 ~~a~~/p.m. on March 21, 1989 in room 527-S of the Capitol.

All members were present except: Representatives Lee Hamm, Mary Jane Johnson, and George Teagarden, 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: Mary Kay Horner, Senior Vice President, Johnson County Bank, Prairie Village, Kansas
Stan Lind, Kansas Association of Financial Services, Kansas City, Kansas
Harold Stones, Kansas Bankers Association, Topeka, Kansas

Representative Roper moved and Representative Green seconded the minutes of the March 2 meeting be approved. The motion carried.

The Chairman opened the hearing on Senate Bill 331.

Mary Kay Horner, Senior Vice President and Manager of the Personal Banking Division of Johnson County Bank, Prairie Village, Kansas, testified in support of Senate Bill #331.

Ms. Horner stated the principal purpose of this bill is to allow financial institutions to charge an annual fee to customers who arrange in advance to have overdrafts paid up to a maximum aggregate amount by establishment of an overdraft line of credit.

When customers do overdraw their account it is of significant expense to the bank. The customary charge for an overdraft is $15.00.

This bill provides for the customer to have an overdraft immediately converted to a loan and the check is paid. The customer avoids embarrassment of having the check returned and also avoids the expense of overdraft charges which would otherwise be assessed. For customers having this arrangement, they only pay interest on the amount of the overdraft from the date it occurs until it is paid and have the option of paying the same in installments.

A special application for the account must be made and the credit-worthiness of the customer determined and a maximum line of credit established.

It is felt this bill would be of benefit to the consumer-customer, of benefit to merchants and others who receive checks in payment for their goods and services, and that it allows the financial institution to recover its costs for maintaining such a specialized account. (See Attachment #1).

The next conferee was Stan Lind, Kansas Association of Financial Services, Kansas City, Kansas, stating there are several problems with the bill.

Mr. Lind stated the testimony by the first conferee was different from what the bill states. He stated that he had talked to others and felt he had no problem with the bill until the testimony, now there is a problem for his financial services and wants the bill amended.

Representative Shallenburger moved that the bill not be passed out.

After discussion by the Committee, Staff and other confereees present, it was decided this bill should have further study. The Senate had thought the bill had merit.

MINUTES OF THE HOUSE COMMITTEE ON Commercial & Financial Institutions,

room 527-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on March 21, 1989, 19__.

Representative Shallenburger withdrew his motion.

Representative King moved and Representative Wilbert seconded that S.B. 331 be tabled. The motion carried.

Harold Stones said he would send the members a memorandum of S.B. 331 hoping it would clarify some of the points that had come out of the discussion.

The Chairman closed the hearing on S.B. 331 and opened the hearing on S.B. 251.

Harold Stones, Kansas Bankers Association, testified in support of Senate Bill 251, stating that all banks have a determined lending limit for each of their customers which is set by their regulatory agency. In general, the limit is 15% of the unimpaired capital and surplus of the bank, with certain special exceptions.

In the case of a limited partnership, any one partner, by the very nature of the entity, contributes only financial support and may limit liability to excluse any partnership debt or any liability of an action against the partnership. Since the limited partner is not responsible for the debt of the partnership, it had long been our position that the partnership debt should not count within the loan limit of any limited partner.

In 1988, the Attorney General's office issued an opinion that the working of the statute made no differentiation for LIMITED partners, and treated them as any other partnership.

Senate Bill 251 would codify the practice that such partnership debt would not count against a limited partner. (See Attachment #2).

After discussion, the Chairman asked what the Committee wished to do on Senate Bill 251.

Representative King moved and Representative Green seconded that S.B. 251 be passed out favorably. The motion carried.

The meeting adjourned at 4:40 P.M.

Date: 3/21/89

GUEST REGISTER

COMMERCIAL AND FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
Stan Lind	Kansas Assn. of Financial Services	KCKs.
Glen Mangren	Johnson County Bank	Prairie Village, KS
Mary Kay Horner	Johnson County Bank	6940 Mission Rd P.V. KS 66208
Judy Braverd.	Consumer Credit	Topeka

TESTIMONY OF MARY KAY HORNER
HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS
MARCH 21, 1989

SENATE BILL 331

Mr. Chairman and members of the Committee, I am Mary Kay Horner, Senior Vice President and Manager of the Personal Banking Division of Johnson County Bank, n.a., which is located in Prairie Village, Kansas. I am appearing in support of Senate Bill 331.

The principal purpose of this bill is to clarify the right of a financial institution to charge an annual fee to customers who arrange in advance to have check overdrafts covered up to a maximum aggregate amount of credit.

As I am sure you are aware, from time to time customers do overdraw their bank accounts, sometimes accidentally and, unfortunately, on some occasions on purpose. When this occurs, there is a significant expense to the bank just in processing the overdraft, not to mention increased risk of loss and the loss of interest to the bank if funds are advanced in excess of the funds which the customer has on deposit. To attempt to partially recover these expenses, banks have developed service charges which are assessed against the customer if an account is overdrawn or if an insufficient funds check is received and the check is returned. These charges vary from institution to institution. In our case, we charge $15 for each overdraft

Atch #1

check, whether it is paid or returned, and an additional daily charge if the overdraft is not paid.

Several years ago, our bank and, I believe, a number of other banks in Kansas developed what can best be described as a standby overdraft line of credit. Simply put, this is an arrangement whereby a customer files an application for a maximum line of credit with the bank. If the customer writes a check which overdraws his account, the overdraft is immediately converted to a loan and the check is paid. The customer avoids the embarrassment of having his check returned and also avoids the expense of overdraft charges which would otherwise be assessed. For customers having this arrangement, they only pay interest on the amount of the overdraft from the date it occurs until it is paid and have the option of paying the same in installments.

As you might imagine, the creation of this arrangement is not without expense to the bank. A special application for the account must be made, requiring the use of bank personnel. The creditworthiness of the customer must be determined and a maximum line of credit must be established. System safeguards must be put in place to assure that if this particular customer overdraws his account, the normal processes of overdraft will not apply and that the check creating the overdraft will be honored without penalty. Additionally, a special statement is developed and mailed on a regular basis showing the use of the line of credit, if any, the computation of interest, the minimum payment which must be made on the account, and the date when that payment is due.

It should be emphasized that on these accounts, the bank's cost is not a one time cost. Eligibility for overdraft lines of credit and the amount of those lines must be reviewed annually and system safeguards must be regularly checked to make sure that the customer has the overdraft protection to which he is entitled.

Senate Bill 331 makes it clear that financial institutions are authorized to charge an annual fee to customers for the maintenance of this kind of special service, whether or not the service is utilized. I am sure that many banks, including our bank, heretofore concluded that these charges were the equivalent of operation or transaction charges similar to the monthly minimum fees that financial institutions charge on regular checking or money market accounts. A question has now arisen, however, as to whether such a charge is permissible if it involves not only the maintenance of a checking account but also the extension of an overdraft line of credit. Senate Bill 331 would make it clear that an annual charge could be made for such an account if the customer desires this type of service and this type of protection.

We believe that the service is of great advantage to those of our customers who desire to use it, thus avoiding the necessity of them coming in and negotiating small short-term loans if they need funds in limited amounts for short term borrowing. Interestingly enough, we find that many of our customers apply for and have the account available just for protection and may never use it.

Allowing financial institutions to charge annual fees for accounts having an overdraft line of credit is very similar to allowing annual over-limit fees or cash advance fees for the privilege of using a lender credit card as authorized in S(c) of K.S.A. 16a-2-501 (the section being amended by this bill). Many credit cards carry the privilege of the holder writing a check on an account in which the holder has no funds and then allows for a pay-off, at interest, over a prescribed maximum term. This is essentially what occurs when a financial institution opens an account for a customer with overdraft privileges. We feel it is appropriate that banks also be allowed to recover a part of their costs by being authorized to charge annual fees on these special accounts.

We sincerely hope that the Committee will see fit to recommend this bill for passage. We believe it is of benefit to the consumer-customer, of benefit to merchants and others who receive checks in payment for their goods and services, and that it allows the financial institution to recover its costs for maintaining such a specialized account.

Mr. Chairman, we would be happy to respond to any questions from you or members of the Committee.

Mary Kay Horner

Serving a Great Profession

KANSAS BANKERS ASSN.

1500 MERCHANTS NTL. BLDG. TOPEKA, KS 66612

March 16, 1989

TO: House Committee on Commercial and Financial Institutions

FROM: Kansas Bankers Association

RE: Senate Bill 251, relating to loan limits for limited partnerships.

Thank you, Mr. Chairman and Members of the Committee for this opportunity to appear in support of S. B. 251, as amended by the Senate Committee.

All banks have a determined lending limit for each of their customers, which is set by their regulatory agency. In general, the limit is 15% of the unimpaired capital and surplus of the bank, with certain special exceptions.

In the case of a limited partnership, any one partner, by the very nature of the entity, contributes only financial support and may limit liability to exclude any partnership debt or any liability of an action against the partnership. Since the limited partner is not responsible for the debt of the partnership, it had long been our position that the partnership debt should not count within the loan limit of any limited partner.

But in 1988, the Attorney General's office issued an opinion that the wording of the statute made no differentiation for LIMITED partners, and treated them as any other partnership.

Senate Bill 251 would codify the practice that such partnership debt would NOT count against a limited partner. The Senate amendment also addresses the "flip side" and stipulates that the debt of any limited partner or partners will not count against the limited partnership.

If the Kansas State Bank Department should find that there is any extensive relationship between the two, and that it is not a true LIMITED partner relationship, they could disallow such excessive borrowing by declaring the transaction to be "unsafe and unsound", and thereby they retain the authority to police any such abuse, if it should ever occur.

Thank you, Mr. Chairman, and members of the Committee. We will very much appreciate your support for Senate Bill 251.

Harold Stowe

Atch #2

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 17, 1988

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 88-66

W. Newton Male
Commissioner
Banking Department
700 Jackson, Suite 300
Topeka, Kansas 66603-3714

Re: Banks and Banking -- Banking Code; Powers -- Limitation on Loans; Limited Partnerships

Synopsis: To ensure good banking practices, the banking code establishes limitations on lending to any one person, copartnership, association or corporation. No distinction is made between limited and general partnerships. In determining the limitation of liability to a bank of a limited or general partnership, the bank must consider the total liability of the partnership to the bank, plus the liability of the partner having the greatest debt to the bank in comparison to the other members. Cited herein: K.S.A. 1987 Supp. 9-1104, 56-1a101(g).

* * *

Dear Commissioner Male:

As Banking Commissioner, you request our opinion concerning limitations on loans to limited partnerships. Specifically, you ask whether the amount to which a limited partner is obligated to the partnership should be considered in