Approved 3/1/89
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by SENATOR RICHARD L. BOND
Chairperson
at

9:00 a.m./~~p.m.~~ on TUESDAY, FEBRUARY 28, , 1989 in room 529-S of the Capitol.

All members were present ~~except~~:

Committee staff present:

Bill Wolff, Legislative Research
Bill Edds, Revisor's Office
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Harold Stones, Kansas Bankers Association

Chairman Bond called the meeting to order at 9:11 a.m.

SB 251 - Harold Stones, Kansas Bankers Association, spoke before the committee in behalf of this proposed legislation. Mr. Stones stated that this bill provides that "if a limited partner is not liable for the debts or actions of the partnership by agreement, the debts of the limited partnership shall not be included in the lending limit for the limited partner." Continuing, Mr. Stones said that the proposed amendment to the bill would address the flip side of the equation, that is, "if a limited partner has limited his liability for the debts and actions of the partnership by agreement, then the debts of the limited partner shall not be included in the lending limit for the limited partnership." (attachment 1) According to Mr. Stones, this bill has the approval of the Attorney General and also the State Banking Department.

Discussion followed concerning the liabilities and responsibilities of the individual and partners in a limited partnership. A committee member inquired if the language, proposed by the KBA, addressed the problem it was intended to address. Mr. Stones assured the committee that Charles Henson, their Legal Counsel, thought that it did.

Senator Kerr made a motion to adopt the amendment to SB 251. Senator Salisbury seconded the motion and the motion passed.

Senator Salisbury moved that the committee report SB 251 out of committee favorably as amended. Senator Kerr seconded the motion. The motion carried.

Chairman Bond adjourned the meeting at 9:32 a.m.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

Tues. Feb. 28

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2-28-89	Kathy Taylor	Topeka	Kan Bankers Assn.
	Harold Sores	"	"
	Brad Smoot	Topeka	4th Financial Corp.

February 28, 19

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kansas Bankers Assn.

RE:

SENATE BILL 251

Limited Partnerships - Legal Lending Limit

SB 251 is designed to codify what we understand is an existing practice of the State Banking Department in their examination of state-chartered banks.

As you know, all banks have a determined "lending limit" for each of their bank customers. This limit is stated in terms of a percentage of the bank's capital stock paid in and unimpaired and the unimpaired surplus fund of such bank. By law, this places a limit above which the lender may not loan any more to any one borrower. The computation of this "lending limit" becomes complicated in certain circumstances where the individual borrower may also hold a business interest in another entity, such as a corporation or partnership, which is also a loan customer of the bank. In these cases, the two customers' loans may be combined for lending limit purposes, depending on a determination by the State Banking Department whether the individual and the business entity have common characteristics, such as a common source of repayment, the exercise of control over the business, etc., sufficient to conclude that the two borrowers are in fact, one borrower.

In the case of a limited partnership, any one partner, by the very nature of the entity, infuses only financial support and may thereby limit his liability so he is not personally liable for partnership debt or for partnership actions. Therefore, when a bank has a loan to an individual who is a limited partner in a limited partnership to which the bank also has a loan, it is the general policy of the banking department (as we understand it), to find the two entities to be separated for lending limit purposes - unless there are extenuating circumstances which do not create a true limited partnership relationship.

SB 251 would codify this existing practice for future continuity of bank examinations by the State Department. As stated, it provides that if a limited partner is not liable for the debts or actions of the partnership by agreement, the debts of the limited partnership shall not be included in the lending limit for the limited partner. The proposed amendment which we have passed out simply states that the flip side of this equation is also true - that is, that if a limited partner has limited his liability for the debts and actions of the partnership by agreement, then the debts of the limited partner shall not be included in the lending limit for the limited partnership.

S F L & A 3/25/87
attachment 1

This will not preclude the Banking Department from using discretionary authority to combine these two customers' loans for lending limit purposes in the case where the limited partner has not sufficiently limited his liability to the limited partnership. The Department may still declare such extensive lending to what they have determined to be "one" borrower as an exercise of "unsafe and unsound" banking practices and so retain the authority to police any such abuse.

In summary, the KBA believes it is necessary to codify this stated general practice of the banking department, to promote continuity for bank examinations throughout the state now and in the future.

SenB251.9fe

AMENDMENT TO SENATE BILL 251

Mr. Chairman:

The KBA suggests an amendment to S. B. 251, on page 1, Line 25, by inserting the following after the word, "thereof":

"other than limited partners who, under the limited partnership agreement, are not liable for the debts or actions of the limited partnership"

Session of 1989

SENATE BILL No. 251

By Committee on Financial Institutions and Insurance

2-13

AN ACT relating to banks and banking; concerning limitations on liabilities to banks with respect to limited partners under a limited partnership agreement; amending K.S.A. 1988 Supp. 9-1104 and repealing the existing section.

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

Section 1. K.S.A. 1988 Supp. 9-1104 is hereby amended to read as follows: 9-1104. (a) The total liability to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof, and, *except as provided herein for the liability of a limited partner,* including in the liability of a member of a copartnership or association the liability of the co-partnership or association, shall not at any time exceed 15% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank. *If under the limited partnership agreement a limited partner is not liable for the debts or actions of the partnership, the liability of the limited partnership shall not be included in the liability of the limited partner. These limitations on total liability to any bank are* subject to the following:

(1) So long as the obligation of a drawer, endorser or guarantor remains secondary, it shall not be included within the meaning of the term liability; but the discount of bills of exchange, whether or not accepted by the drawee, drawn in good faith against actual existing values, loans upon produce in transit, loans upon bonded warehouse receipts issued to the borrower by some other person, firm or corporation as collateral security, the discount of commercial or business paper actually owned by the person negotiating the same, loans secured by not less than a like amount of treasury bills, certificates of indebtedness, or bonds or notes of the United States of

other than limited partners who, under the limited partnership agreement, are not liable for the debts or actions of the limited partnership

r-vable to Ford Motor C- dit (FMC) or General M. tors Acceptance Corporat..n (GMAC)?

Yes. The requirement of rebating interest by the accrual method applies to all consumer credit transactions (both loans and sales) subject to the UCCC, and this will include obligations to FMC and GMAC.

Question 5: A state-chartered bank has entered into a loan agreement with a limited partnership and the loan agreement specifically limits the liability of the limited partner. In determining the liability of the individual partner for lending limit purposes, must the total partnership liability still be added to the partner's individual liability?

Yes. Attorney General Opinion No. 88-66 makes it reasonably clear that the state law must be followed literally. The total partnership liability must be added to the partner's individual liability, regardless of the fact that (1) the individual is a limited partner, or (2) the bank has specifically limited the partner's liability on a partnership loan. The State Banking Department is taking this literal approach and will be utilizing this interpretation when it examines state banks.

Kansas Bankers Association
Harold Stones
1500 Merchants National Bldg.
Topeka, KS 66612

Dear Harold:

I am very appreciative of the services provided to us by the KBA. The information that comes to us from the Compliance Legal and Litigation center is invaluable.

Question number 5 in Anne Lolley's letter of December 19 presents us with a special problem. If, in fact, the full liability of a limited partnership applies against an individual partner we are automatically in violation of Reg "O", Section 9-1104, K.S.A. Part 6B and the banks's lending limits. Ironically, the problem arises because a number of [redacted] civic minded residents invested in a Limited Partnership to bring a recreational facility to the [redacted] community.

Due to the far reaching effect of this interpretation it seems to me that this may be an issue K.B.A. should take to the Legislature. In our particular situation a quarter million dollar loan will be added to the liability of several $5,000.00 investors who have liability in the partnership only to the extent of their investment.

Thank you for your consideration of this issue.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-37

May 17, 1988

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

determining the maximum liability which may be incurred by the limited partnership.

The purpose of loan limitations established by K.S.A. 1987 Supp. 9-1104 is to regulate banks by enforcing good banking practices. National Farmers Organization v. Kinsley Bank, 731 F.2d 1464, 1467 (10th Cir. 1984) (federal jurisdiction by diversity, construing K.S.A. 9-1104, holding bank not excused from liability to borrower for promising loan in excess of limitation). See also, 7 Michie, Banks and Banking §187 (1980) (regarding similar provisions of federal code regulating national banks) and Anderson v. Akers, 7 F.Supp. 924, 942 (D.C., Ky. 1934) (lending limit in federal code intended to prevent national banks from "putting too many eggs in one basket"). The bank commissioner may order a bank to cease carrying a loan in excess of the limitation, and failure to comply with the order is grounds for removing an officer or director. K.S.A. 1987 Supp. 9-1104(d).

The formula for establishing lending limitations appears in K.S.A. 1987 Supp. 9-1104, which states in relevant part:

> "The total liability to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof, and including in the liability of a member of a copartnership or association the liability of the copartnership or association, shall not at any time exceed 15% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank. . . ." K.S.A. 1987 Supp. 9-1104(a).

This rule is subject to several variations not relevant to your inquiry.

Regarding partnerships, a three-step analysis is required. Initially, it must be determined whether the copartnership itself has liabilities to the bank in excess of the lending limit. Secondly, the individual members' liability to the bank, separate from that of the copartnership, is examined. Finally, if neither of the above categories of liability

exceed the lending limit, then the liability to the bank of the individual member having the greatest liability in comparison with other members is added to the liability of the copartnership. The resulting liability of the third inquiry must also be below the lending limit.

You ask whether, in making the third determination for a limited partnership, (a) the total debt of the entity is added to the greatest individual liability, or (b) whether only the amount to which a member's obligation to the entity is limited by the partnership agreement is added to the greatest individual liability. To illustrate the distinction between (a) and (b), assume the following: Ltd. is a limited partnership with liabilities to Bank of $100,000. Partner, a limited partner of Ltd., is limited to a $50,000 contribution obligation to Ltd. pursuant to the partnership agreement, and has a personal debt to Bank of $60,000. The lending limit of Bank is $150,000. In this illustration, the first two inquiries reveal that neither Ltd. or Partner have liabilities exceeding the lending limit of Bank. Using option (a) of the third inquiry, Partner's personal debt of $60,000 would be added to Ltd.'s liability of $100,000, resulting in an excess of $10,000 over Bank's lending limit. Using option (b), Partner's personal debt of $60,000 would be added to the $50,000 limit of liability per the partnership agreement, resulting in an amount less then Bank's lending limit. You state that if Partner were a general partner, option (b) would not be used.

Whatever benefits may be derived from differentiating between limited and general partnerships in applying K.S.A. 1987 Supp. 9-1104(a), we believe that the distinction involves a legislative choice which has not been made. The statutes refer to copartnerships without distinguishing between limited and general partnerships. A limited partnership is a form of partnership having one or more general partners and one or more limited partners. See, e.g. K.S.A. 1987 Supp. 56-1a101(g). A limited partnership is therefor a copartnership within the meaning of K.S.A. 1987 Supp. 9-1104(a).

In conclusion, it is our opinion that the lending limitations in the banking code are intended to ensure good banking practices. The statute makes no distinction between limited and general partnerships. In determining the limitation on liability [illegible]

bank must consider the total liability of the limited partnership to the bank, plus the liability of the partner having the greatest liability to the bank in comparison to the other members.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Mark W. Stafford

Mark W. Stafford
Assistant Attorney General

RTS:JLM:MWS:jm