

3/17/89

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCEThe meeting was called to order by SENATOR RICHARD L. BOND at
Chairperson9:00 a.m./~~p.m.~~ on TUESDAY, MARCH 14, 1989 in room 529-S of the Capitol.All members were present ~~except~~

Committee staff present:

Bill Wolff, Legislative Research
Bill Edds, Revisors Office
Myrta Anderson, Legislative Research
Louise Bobo, Committee Secretary

Conferees appearing before the committee:

Grant Brooks, Kansas Banking Department
Roger Swanson, KBA Trust Division
Steven Goodrich, Attorney with Brown, Koralchik, and Fingersh
Clifford W. Shinski, Investors Services Trust Company
James Deberry, Johnson County Bank and the Kansas Trust Company
John Peterson, Columbian Trust Company

Chairman Bond called the meeting to order at 9:10 a.m.

HB 2004 - Grant Brooks, Kansas Banking Department, appeared in support of HB 2004. According to Mr. Brooks, the Banking Department considers the purpose behind the introduction of this bill to be what the Department refers to as the three "C"s." They are: (1) clarification as to what powers a trust company can now exercise--the last major revision of the trust company statutes was over 50 years ago. (2) cleanup of the language which constitutes the major purpose of HB 2004. To avoid any confusion regarding deposit taking powers, all references to "trust company" were deleted from the statutes, and (3) capital--under present statutes, trust companies need less than half the capital required for banks yet act in the same fiduciary capacity as banks.

HB 2004 requires that a trust company provide the same minimum capital as a bank and also includes a provision that would allow the contracting out of trust business. (attachment 1)

Roger Swanson, KBA Trust Division, appeared in support of HB 2004.

Steven Goodrich, Attorney with Brown, Koralchik, and Fingersh, appeared in support of this bill and informed the committee that it is similar to the statutes of other states including Missouri and Wisconsin.

Also presenting testimony in favor of HB 2004 was Clifford W. Shinski, President, Investors Services Trust Company. Mr. Shinski stated that this bill specifically provides sorely needed updates and clarifications in a number of areas pertaining to trust companies and fiduciary responsibilities. (attachment 2)

James Deberry, Johnson County Bank, Prairie Village, and the Kansas Trust Company, Prairie Village, appeared before the committee briefly and voiced his support for the bill.

John Peterson, Columbian Trust Company, appeared briefly before the committee in support of the bill.

There were no opponents to the bill and hearings were closed.

Staff suggested an amendment to the bill to further clarify the language in 75-4201 by amending the statute by deleting the words "or trust companies."

Senator Karr made a conceptual motion to amend the bill by deleting the words "or trust company" in 75-4201. The motion was seconded by Senator Salisbury and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE
room 529-S, Statehouse, at 9:00 a.m./~~p.m.~~ on TUESDAY, MARCH 14, 1989

Senator Salisbury made a motion to pass the bill out of committee favorably as amended. This motion was seconded by Senator Parrish. The motion carried.

Chairman Bond adjourned the meeting at 9:30 a.m.

TO: The Senate Committee on Financial Institutions and Insurance
FROM: The Kansas Banking Department
RE: REVISION OF TRUST COMPANY STATUTES: K.S.A. 17-2001 et. seq.
DATE: March 14, 1989

Chairman Bond, and members of the Committee, my name is Grant Brooks. I'm General Counsel for the Kansas Banking Department. We were one of the proponents of this bill, during its adoption by the Special Committee on Commercial and Financial Institutions.

The purpose behind the introduction of this bill is basically what the Department calls the three (3) "C's." That is: Clarification, Clean-up, and Capital. H.B. 2004 was amended by the House Committee to include a fourth "C" that is; a contracting out provision that allows a bank or trust company to contract out of the trust business without prior court review.

First, Clarification. The last major revision of the trust company statutes was over 50 years ago. However, over the years the trust company statutes have been substantially expanded to the point where it is now unclear exactly what powers a trust company can now exercise. For example, does a trust company possess the same powers as a state bank? Depending upon your interpretation of K.S.A. 17-2002, a trust company may operate just like a state bank; without first having to obtain the authority to accept demand deposits. In fact, the statutes, in their present form, are so obscure that the Banking Department has yet to ascertain exactly what, if any, type of deposits a trust company can legally accept.

House Bill (H.B.) 2004 clarifies and removes ambiguity from the present trust company statutes by revising trust company powers.

H.B. 2004, sharpens the trust powers corporate fiduciaries currently have and eliminates any questions about a trust company's ability to accept deposits by clearly establishing that a trust company will take no "deposits." "Deposits" is a term of art defined in K.S.A. 9-701, Subsections g through k.

H.B. 2004 embodies our intent and concept that the trust company statutes must be for a pure trust company: A company that is basically a corporate fiduciary and nothing else. If a company wants to engage in an activity that is tantamount to being in the general business of banking, then that company must convert into a state bank.

Attachment 1
3/14/89 SFI+I

So to clarify the current statutes, H.B. 2004 cuts through old language and preserves the powers a corporate fiduciary would commonly possess and removes any ambiguity that might allow a trust company to operate as a state bank, without first being chartered as such.

The second "C" that H.B. 2004 addresses stands for Clean-up. Over the years, numerous provisions of the Banking Code have been copied and placed in the trust company statutes contained in Chapter 17 of the Kansas Statutes. Also the trust company statutes have incorporated, by reference, the penalty provisions contained in the Banking Code. Additionally, many of the trust company statutes regarding the corporate administration are substantially identical to those in the Banking Code. For example, statutes concerning transfer of capital stock, liability of stockholders, right of a pledgor to vote stock, and statutes concerning the board of directors and their qualifications and surety bond coverage.

H.B. 2004 cleans up these statutes in two ways. First it collapses the redundant trust company statutes into the Banking Code. This is accomplished by including a reference to "trust company" in each appropriate statute in the Banking Code.

Second, the language in each statute, that will be amended to include a reference to trust company, will also be cleaned up and modernized. For example, in the penalty provisions of the Banking Code, not only has a reference to trust companies been added; but also, the language has been modernized to fit the classification system now used to delineate the different classes of misdemeanors and felonies. In fact, the bulk of H.B. 2004 is clean-up. Many statutes contained a reference to trust companies when directing an organization where it could deposit funds. Therefore, to avoid any confusion regarding deposit taking powers, all references to "trust company" were deleted from those statutes.

The third "C" that H.B. 2004 addresses is Capital. Under the present statutes, trust companies need less than half the capital required for banks, but yet they act in the same fiduciary capacity as banks. Also, trust companies are not required to have the total amount of required capital as

soon as they are authorized to act as such, rather only 20 percent is required. Additionally, the statutes place a cap on how much capital a trust company can have. There is no logic behind the current statutes that arguably mandate a trust company be under capitalized. It has been at least thirty years since either capital structure statute has been revised.

H.B. 2004 corrects these problems by requiring a trust company provide the same minimum capital as a bank, that is \$250,000 and no longer will it be based on population. The \$250,000 requirement is a flat minimum and the entire amount must be in place before a trust company commences business. Second, the million dollar limit on capital is removed.

Additionally, this bill was amended by the House committee to include a provision allowing the contracting out of trust business.

This provision allows a trust company or a bank to contract to transfer their trust business to another trust company or bank with trust powers. Instead of first getting court approval to transfer trustee responsibilities, the transfer can now be more expeditious. Every "contracting out" agreement must be reviewed by the State Bank Commissioner. If it is not disapproved within 60 days, then the agreement passes administrative review. The standards for review are whether the agreement fails to meet a public need or does not serve the public interest.

The provision provides an objecting beneficiary with the remedy to petition for court review of the transaction. The court is given latitude to fashion any appropriate relief, including the awarding of attorney fees.

In summary, H.B. 2004 clarifies that powers of a trust company. It also cleans up the trust company statutes by folding them into the Banking Code and by modernizing language.

H.B. 2004 addresses the capital requirements of a trust company.

This bill mandates a trust company have the same minimum capital requirements as other institutions that provide trust services.

Finally, this bill provides a financial institution with a trust department, or a trust company with the power to contract out of the trust

business. This transaction is reviewed by the State Bank Commissioner and objecting beneficiaries have the right to judicial review.

H.B. 2004 is a viable piece of legislation that brings badly needed changes to the trust company statutes.

The Kansas Banking Department requests you give H.B. 2004 strong consideration.

Thank you for your time.

GLCB:dsl



THE INVESTORS SERVICES TRUST COMPANY

March 13, 1989

Honorable Richard Bond, Chairman and
Members of the Senate Committee on
Financial Institutions and Insurance
The State Senate
Topeka, Kansas 66612

RE: House Bill 2004

Dear Senators:

I am here today to urge you to support House Bill 2004 by the House Committee on Commercial and Financial Institutions, and to encourage your efforts in updating the trust banking laws of the State of Kansas.

I have been involved in the trust and investment industry for 19 years, much of which was spent with the First National Bank of Topeka (now Bank IV of Topeka). During that time I have worked with numerous individuals, corporations, foundations and public entities in numerous fiduciary capacities. I have continuously worked with the Kansas Public Employees' Retirement System since late in 1970, assisting them with their custodial banking needs, and more recently as a principal of one of their investment advisors.

I feel strongly that, based upon my experience and involvement in understanding and complying with both state and national banking and securities laws, H. B. 2004 specifically provides sorely needed updates and clarifications in a number of areas pertaining to trust companies and fiduciary responsibilities. The Bill, as passed by the House, reflects a uniform posture by the State Banking Commissioner's Office and by all of the Trust Companies effected by the Bill.

As an experienced trust officer, and a principal organizer of a new non-depository trust company located in Johnson County, I feel it most important that Kansas financial institutions have as favorable a regulatory environment in which to compete as Bank Trust Divisions and Trust Companies in other states -- most notably institutions domiciled in the State of Missouri.

I am confident that the increasing demand for trust and investment services will provide an exciting, growing, and continuously changing environment in which to compete during the next decade

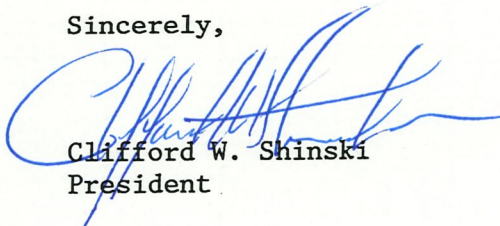
*Attachment 2
Sen. F. I & I
3/17/89*

and that the skills, technology and focus required to excel in this industry may be found and developed within the State of Kansas to the degree that they might be in any of the money centers of our country.

Your support of the Bill would be a significant step towards providing all the citizens of Kansas an environment in which they may obtain the complex trust services, from Kansas Financial Institutions, that will be crucial in developing, managing and retaining capital within our State in the ensuing years.

Thank you for your attention to this matter.

Sincerely,



Clifford W. Shinski
President

CWS:lp