Approved Clyde Graeber 2-1-90
Date

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions.

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

3:30 ~~a.m.~~/p.m. on January 25, 1990 in room 527-S of the Capitol.

All members were present except: Representatives Cates, Ensminger, Johnson, Long and Schauf, Excused.

Committee staff present: Bill Wolff, Reserarch Department
June Evans, Secretary

Conferees appearing before the committee:

The Chairman called the meeting to order at 3:30 P.M.

Dr. William G. Wolff, Kansas Legislative Reserach Department, gave a staff review of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and how it relates to the state banking laws. While the 400-page public law addresses numerous issues, it confronts two problems in particular: (1) it brings solvent savings and loan associations (thrifts) up to "bank-like" standards; and (2) it appropriates money and establishes agencies to dispose of insolvent institutions. The imposition of new standards upon solvent thrifts will have an influence on Kansas thrifts and upon all such institutions throughout the country.

Under prior regulatory structure, the Federal Home Loan Bank Board (FHLBB) was the chief supervisory agency of all thrifts. Insurance of deposits in thrifts was provided by the Federal Savings and Loan Insurance Corporation (FSLIC), a part of the FHLBB. FIRREA abolished the FHLBB and the FSLIC. The Office of Thrift Supervision (OTS), a bureau within the Department of Treasury and headed by the Director of the Office of Thrift Supervision (DOTS), was created to charter federal thrifts and to handle the supervision and examination of state and federal chartered associations. The responsibility for insuring the deposits of thrifts was transferred to the Federal Deposit Insurance Corporation (FDIC), the insurance agency for banks. The insurance funds for banks and thrifts were not combined by FIRREA; rather, there now exists under the FDIC a Bank Insurance Fund (BIF) and a Savings Association Insurance Fund (SAIF).

Federal law requires national banks and bank holding companies to abide by the branching laws of the state in which the bank is chartered. On the subject of intrastate branching, the 1927 McFadden Act (12 USC 36(c)), provides in pertinent part, that:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches. . . . at any point within the State in which such association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.

Additionally, regarding the issue of interstate banking, the Douglas Amendment (Section 3 (d) of the Bank Holding Company Act, states, in pertinent part, that:

> Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted . . . unless the acquisition of such shares or assets of a State bank by an out-of-state bank holding company is specifically authorized by the statute laws of the state in which such bank is located, by language to that effect and not merely by implication.

FIRREA makes it clear that a bank or bank holding company may acquire any savings and loan association, failed, failing, or healthy and the Act places no limitation on acquisitions of thrifts to those states in which the bank or holding company may own a bank.

Enactment of FIRREA and its ongoing implementation demonstrate that the federal government has reclaimed primacy over the formation, operation, and supervision of the thrift industry, and for that matter, the banking industry as well.

Kansas statutes "preclude and inhibit" implementation of the federal Act, and since federal preemptions of Kansas statutes have already occurred, the policy decision to change Kansas bank structure laws is before the Legislature for resolution.

Based upon the Comptroller of the Currency's order, all national banks in Kansas can branch intrastate in the same manner as savings and loan associations, e.g., de novo, statewide. Since Kansas law prohibits such branching for state chartered banks, they are at a competitive disadvantage with the national banks. This inequity in structure laws between national banks and state banks, places before the Legislature the policy decision whether to allow de novo intrastate branch banking for state chartered banks. (See Attachment #1).

Representative Green moved and Representative Dillon seconded the minutes of the January 16 meeting be approved. There was no discussion and the motion carried.

The meeting adjourned at 4:10 P.M.

Date: 1-25-90

GUEST REGISTER

COMMERCIAL AND FINANCIAL INSTITUTIONS

NAME	ORGANIZATION	ADDRESS
T. C. ANDERSON	KSCPA	TOPEKA
JIM TURNER	KLSI	Topeka

MEMORANDUM

Kansas Legislative Research Department

Room 545-N -- Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

January 25, 1990

To: House Committee on Commercial and Financial Institutions

From: William G. Wolff

Re: I. Financial Institutions Reform, Recovery and Enforcement Act of 1989, A Summary with Implications for Kansas

II. Intrastate Branch Banking in Kansas

I. FINANCIAL INSTITUTIONS REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989

Introduction

The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) was enacted into law on August 9, 1989. The nearly 400-page public law, while addressing numerous issues, confronts two problems in particular: (1) it brings solvent savings and loan associations (thrifts) up to "bank-like" standards; and (2) it appropriates money and establishes agencies to dispose of insolvent institutions. The imposition of new standards upon solvent thrifts will have an influence on Kansas thrifts and upon all such institutions throughout the country. Of more immediate concern, however, are the repercussions of FIRREA on banks and banking in Kansas. The immediacy of the issue arises from the fact that FIRREA encourages banks and bank holding companies to acquire the failing thrifts and permits the acquisition of healthy associations as well. Existing Kansas law relating to intrastate branching and the lack of a statute specifically allowing interstate banking may "preclude or inhibit" resolution of thrifts held in Resolution Trust Corporation (RTC) receivership and, therefore, are subject to federal preemption.

FIRREA Summary

Briefly, under prior regulatory structure, the Federal Home Loan Bank Board (FHLBB) was the chief supervisory agency of all thrifts. Insurance of deposits in thrifts was provided by the Federal Savings and Loan Insurance Corporation (FSLIC), a part of the FHLBB. Both the supervisory and insurance activities of thrifts were carried out by the FHLBB. FIRREA abolished the FHLBB and the FSLIC. The Office of Thrift Supervision (OTS), a bureau within the Department of Treasury and headed by the Director of the Office of Thrift Supervision (DOTS), was created to charter federal thrifts and to handle the supervision and examination of state and federal chartered associations. The responsibility for insuring the deposits of thrifts was transferred to

Atch #1

the Federal Deposit Insurance Corporation (FDIC), the insurance agency for banks. The insurance funds for banks and thrifts were not combined by FIRREA; rather, there now exists under the FDIC a Bank Insurance Fund (BIF) and a Savings Association Insurance Fund (SAIF).

For thrifts that had failed prior to January 1, 1989, and were in receivership with the FSLIC, FIRREA created the FSLIC Resolution Fund and charged the Fund with liquidating or selling any thrifts in receivership and managing and selling the assets it acquires from the FSLIC or from seized thrifts. All thrifts that were insolvent on January 1, 1989, but not yet placed by the FSLIC in receivership, were placed in the possession of the RTC. Approximately 280 thrifts currently are in receivership, of which 14 are located in Kansas. The RTC also will take possession of any thrifts that become insolvent and are put into receivership within three years of the date of enactment of FIRREA. The Corporation will manage and dispose of the assets of thrifts in its possession.

In addition to acquisitions, FIRREA allows for the optional conversion of a thrift acquired by a bank holding company through a merger of the two institutions. The amendments to the Federal Deposit Insurance Act allow the merger or consolidation of assets and liabilities or the transfer of them to a subsidiary bank. However, several conditions must be met to make the conversion through merger, including that the transaction be subject to state statutory prohibitions against interstate acquisitions.

Federal Bank Structure Law

In general, federal law requires national banks and bank holding companies to abide by the branching laws of the state in which the bank is chartered. On the subject of intrastate branching, the 1927 McFadden Act (12 USC 36(c)), provides, in pertinent part, that:

> A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches . . . at any point within the State in which such association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.

Additionally, regarding the issue of interstate banking, the Douglas Amendment (Section 3(d)) of the Bank Holding Company Act, states, in pertinent part, that:

> Notwithstanding any other provision of this section, no application shall be approved under this section which will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted . . . unless the acquisition of such shares or assets of a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located, by language to that effect and not merely by implication.

Beginning in 1982, however, with the passage of the Garn-St. Germain Depository Institutions Act, bank holding companies were authorized to acquire failed or failing financial institutions with some regard for state boundary lines, i.e., the Act created a priority structure in which institutions of like charter within the same geographic area could be merged and, failing such a merger, institutions of unlike charter within the same geographic area could be merged and, failing that, institutions of unlike charter in different geographic areas could be merged. Since that date, a number of such acquisition have been approved by the Federal Reserve Board.

FIRREA makes it clear that a bank or bank holding company may acquire any savings and loan association, failed, failing, or healthy and the Act places no limitation on acquisitions of thrifts to those states in which the bank or holding company may own a bank. FIRREA encourages such activities and an amendment to the Bank Holding Company Act adds a new subsection providing that the Federal Reserve Board "may approve an application by any bank holding company . . . to acquire any savings association in accordance with the requirements and limitations of this section." The Federal Reserve Board, the regulator of bank holding companies, has modified its rule and regulation (Regulation Y) to add savings institution operation as a permissible nonbanking activity if the savings institution only engages in taking deposits, lending, and other activities permissible for a bank holding company.

In that regard, the Federal Reserve Board explained in its summary statement associated with the adoption of the amendment to Regulation Y (CFR, September 8, 1989), that:

> Concern regarding the erosion of interstate banking restrictions has also been reduced by the significant increase in state initiatives permitting interstate banking. In this regard, twenty-two states already authorize bank acquisitions on a nationwide basis, and an additional eight states will permit nationwide entry by January 1, 1991. In addition, a total of forty-six states and the District of Columbia have enacted some type of interstate banking statutes . . . .
>
> The Board did seek comment on an option to permit the acquisition of savings associations by bank holding companies only in those states where the holding company could operate a bank . . . the Board has not adopted this option.

In a footnote to the Federal Reserve Board summary, Iowa, Kansas, Montana and North Dakota were identified as not having authorized any form of interstate banking.

Kansas "Bank" Structure Law

Intrastate Branching – Banks. K.S.A. 9-1111 establishes the principle that the business of banking shall be done at the place of business specified in the bank charter and that it is unlawful to establish and operate branches except as specifically provided. The statute proceeds to permit banks to have three or four branches within the geographic boundary of the unit of government specified in the charter, e.g., city, township. In addition to those facilities, any bank may establish a branch bank: at the site of a Kansas bank which was merged into or consolidated with the branching

bank, provided the merged bank had been in existence for five or more years; at the site of a Kansas bank the assets of which were purchased and the liabilities were assumed by the branching bank from a receiver in liquidation of the bank; and in any city located in the same county in which the branching bank is located, if that city does not have a main bank chartered within its corporate limits. Clearly, the statute allows intrastate branching mainly by merger, consolidation or purchase and assumption of assets and liabilities. There is no statutory authorization for de novo chartering of a branch bank.

Intrastate Branching -- Thrifts. K.S.A. 17-5102 defines the terms "branch office" and "home office" and makes it clear that any business that may be transacted at the home office may be transacted at any branch office of the thrift. Further, K.S.A. 17-5225, et seq., establishes the application and approval process for creating a branch office. While not explicitly stated, because hearings on applications are to be in the county wherein the branch will be located, it is clear that thrifts have statewide de novo branching authority under Kansas Law.

Interstate Branching -- Banks. Kansas statutes do not permit Kansas banks to branch outside of the state nor are out-of-state banks authorized to do business in Kansas.

Interstate Branching -- Thrifts. In 1987, the Kansas Legislature allowed state chartered thrifts to branch outside of the state in the same manner that federally chartered associations were allowed to branch interstate. At the time, interstate branching for federal thrifts was confined to interstate transactions involving the acquisition of a failed or failing thrift. The authority to branch interstate was further limited to states whose laws were reciprocal to Kansas.

Implications of FIRREA

1. FIRREA makes it possible for a bank holding company to acquire a thrift through an interstate transaction. Because FIRREA makes the operation of a thrift a permitted nonbanking activity, the prohibition contained in Kansas law against interstate branching does not apply. Therefore, an out-of-state bank holding company may acquire and operate a thrift in Kansas. The acquired thrift cannot be merged with or converted into a branch bank of the acquiring institution, however, because such a conversion would be interstate branching not specifically allowed by Kansas law. But the acquiring bank holding company could re-charter the institution as a savings bank and run it in tandem with the holding company.

Because Kansas does not allow interstate banking, it is possible that prospective out-of-state banks and bank holding companies with resources to acquire a thrift in Kansas will not want to make the investment since the acquired institution would have to be operated as a thrift during the five-year moratorium imposed on conversions by FIRREA. However, the thrift acquired by the bank or bank holding company retains its right to branch as provided by the law of the state in which it is chartered. Such branching authority may be an incentive to acquisition.

2. FIRREA makes it possible for a bank domiciled in Kansas to acquire a thrift domiciled in this state and, upon acquisition, to convert the

thrift into a branch of the acquiring bank. In this regard, FIRREA preempts state laws which place limits on branching, restrict the number of branches in certain geographical locations, and make no provision for cross-institutional purchase.

Within nine days of the enactment of FIRREA, Kansas laws on intrastate branching were preempted when, on August 18, 1989, Bank IV Coffeyville assumed the deposits of First Federal Savings and Loan Association, including those of its branch in Caney. About one month later, Garden National Bank in Garden City acquired the deposits of Colonial Savings in Liberal and those of its branch in Garden City. Most recently, on January 12, 1990, 16 financial institutions, 15 banks, and one savings and loan association acquired the accounts and deposits of Peoples Heritage Savings and Loan of Salina. Most of the 19 branches reopened on Tuesday, January 16, 1990, as branches of the 16 financial institutions.

Summary

Enactment of FIRREA and its ongoing implementation demonstrate that the federal government has reclaimed primacy over the formation, operation, and supervision of the thrift industry, and for that matter, the banking industry as well. A revamped Federal Deposit Insurance Corporation, a new Office of Thrift Supervision, and the Resolution Trust Corporation have unprecedented authority to carry out their missions as defined in the Act. The opening phrase amending Section 13(k) of the Federal Deposit Insurance Act, "Notwithstanding any provision of state law," underscores the intention of the federal government to tolerate no state imposed impediments to carrying out the purposes of FIRREA. Further, on September 26, 1989, the Resolution Trust Corporation determined that "severe financial conditions threaten the stability of a significant number of savings associations or of savings associations possessing significant financial resources," and upon making that determination, tapped the preemption authority FIRREA requires the Corporation to find.

Kansas statutes "preclude and inhibit" implementation of the federal Act, and since federal preemptions of Kansas statutes have already occurred, the policy decision to change Kansas bank structure laws is before the Legislature for resolution.

II. INTRASTATE BRANCH BANKING IN KANSAS

Background

In February, 1987, the U.S. Court of Appeals for the Fifth Circuit, upheld an order of the Comptroller of the Currency allowing a Mississippi national bank to open a branch more than 100 miles from the banks main office, an action which was prohibited by Mississippi statutes for state banks in that state. At issue was the McFadden Act which, as noted above, allows national banks to establish branches wherever "State banks" may do so provided that branching is authorized by "statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication . . . ." That federal Act states that:

> The words "State bank," "State banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

The court concluded that Congress intended to include within the definitions any corporation or institution carrying on banking business, regardless of the title a state gave the institution. Thus, in the Mississippi case, the Court affirmed the Comptroller's order and the legal interpretation behind it: that national banks may only branch as freely as state banks within the same state; that Mississippi savings and loan associations may branch outside their home cities; that Mississippi savings and loan associations offer many of the same products and services as commercial banks; that Mississippi savings and loan associations were "state banks" for McFadden Act purposes; therefore, national banks in Mississippi could branch as freely as Mississippi savings and loan associations.

On appeal to the U.S. Supreme Court, the Court denied certiorari and the decision of the Fifth Circuit Court of Appeals was upheld. The precedent established in the Mississippi case has been used by the Comptroller in Texas, Florida, Missouri, Tennessee, Louisiana, Wisconsin, and Kansas.

The Kansas Case

On August 10, 1988, Peoples National Bank and Trust Company, Ottawa, Kansas requested of the Comptroller of the Currency approval to establish a branch bank near the intersection of U.S. 69 Highway and 199th Street in Johnson County, Kansas. Peoples National Bank's main office is located within the City of Ottawa, in Franklin County. Because the proposed branch was in a township and not in a city, Peoples National Bank and Trust Company was prohibited by Kansas law from operating such a branch bank.

Upon receipt of Peoples' application for the branch bank, the Comptroller of the Currency applied the legal interpretation affirmed by the Fifth Circuit Court of Appeals, finding that savings and loan associations could branch statewide in Kansas, that Kansas savings and loan associations are authorized by state law to carry on the business of banking, i.e., take deposits, pay checks, and make loans; therefore, a national bank in Kansas may branch to the same extent and subject to the same conditions imposed on savings and loan associations under Kansas. Peoples National Bank and Trust Company's application was approved on March 30, 1989.

In response to the State Bank Commissioner's request of the Attorney General to review the authority of a national bank to establish a branch in the same manner as state chartered savings and loan associations, the Attorney General stated: "It is my opinion that the Stilwell branch of the Peoples National Bank and Trust Company of Ottawa, Kansas is not an illegal branch."

Implications for Kansas

Based upon the Comptroller of the Currency's order, all national banks in Kansas can branch intrastate in the same manner as savings and loan associations, e.g., de novo, statewide. Since Kansas law prohibits such branching for state chartered

banks, they are at a competitive disadvantage with the national banks. This inequality in structure laws between national banks and state banks, places before the Legislature the policy decision whether to allow de novo intrastate branch banking for state chartered banks.