

Approved  April 6, 1990
Date

MINUTES OF THE HOUSE COMMITTEE ON Commercial and Financial Institutions.

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

3:30 ~~x~~ p.m. on March 27, 1990 in room 527-S of the Capitol.

All members were present except: Representative Jim Cates

Committee staff present: Bill Wolff, Research Department
Bruce Kinzie, Revisor of Statutes
June Evans, Secretary

Conferees appearing before the committee: Boone Porter, Kansas City, Kansas
Steve English, Arkansas City, Kansas

The Chairman called the meeting to order and opened the hearing on SB 447.

The Chairman asked Mr. Boone Porter if he had any additional changes as the corrections in his testimony already appeared in SB 447. (See Attachment #1). Mr. Porter agreed the changes were already in the Bill.

Steve English, Arkansas City, Kansas, conferee, proposed SB 443 be amended on Page 1, after line 14, by inserting the following sections to read as Attachment #2 reflects.

The Insurance Commissioner requested "insurance" be added. Last year "trust company" was removed and it is being put back in. This was removed in error last year.

After discussion, Representative Roper moved and Representative Shallenburger seconded to amend SB 447. The motion carried.

Representative King moved and Representative Roper seconded to move SB 447 out as amended. The motion carried.

The meeting adjourned at 4:20 P.M.

March 22, 1990

STATEMENT OF H. BOONE PORTER III
REGARDING SENATE BILL NO. 447
BEFORE THE HOUSE COMMITTEE ON
COMMERCIAL AND FINANCIAL INSTITUTIONS

Good afternoon, Mr. Chairman and members of the Committee. My name is Boone Porter. I am a resident of Prairie Village, Kansas, and I am a member of the firm of Lewis, Rice & Fingersh located in Overland Park, Kansas. As you may recall from last year, I was a proponent of House Bill No. 2004 which created K.S.A. 1989 Supp. 9-2107.

The purpose of Senate Bill No. 447 is to make minor technical corrections to K.S.A. 1989 Supp. 9-2107. Specifically, the proposed technical corrections do the following:

- * Clarify the definition of a "financial institution" found in K.S.A. 1989 Supp. 9-2107(a)(3) by deleting the words "trust company." A "financial institution" is a depository institution which does not have trust powers and therefore cannot include trust companies. (See S.B. No. 447 page 1, line 26.)
- * Clarify the scope of an originating trustee's duty to account pursuant to K.S.A. 1989 9-2107(c)(2). Senate Bill No. 447 makes clear an originating trustee's duty to account includes duties imposed not only under statute, administrative rules and regulations and court orders, but also under common law rules. (See S.B. No. 447 page 2, line 8.)
- * Correct typographical errors appearing in K.S.A. 1989 Supp. 9-2107(d). (See S.B. No. 447 page 2, lines 13, 23 and 27.)

These are all noncontroversial changes of a technical and clarifying nature. I urge the Committee to act favorably on Senate Bill No. 447.

Thank you for your consideration of this matter.

Handwritten signature

PROPOSED REVISIONS TO SENATE BILL 447

Amend K.S.A. 9-2103(j) to read as follows:

(j) to act in any fiduciary capacity and to perform any act as a fiduciary which a Kansas state bank may perform under any provision of the banking, insurance, or any other laws of this state, including, without limitation, acting as a successor fiduciary to any bank upon liquidation of its trust department through the transfer of its fiduciary assets pursuant to K.S.A. 9-1604, and amendments thereto, which liquidation may be effected in the manner provided in K.S.A. 1989 Supp. 9-2107 or otherwise;

Amend K.S.A. 9-1405(b) to read as follows:

(b) All Bonds and securities pledged to secure the deposits of any municipal corporation or quasi-municipal corporation shall be deposited with a Kansas state or national bank or trust company having adequate modern facilities for the safekeeping of securities or the federal home loan bank of Topeka, and a joint custody receipt taken therefor with one copy going to the municipal corporation or quasi-municipal corporation making the public deposit and one copy going to the bank, state or federal chartered savings bank which has secured such public deposits. No bonds or securities pledged to secure public deposits shall be left for safekeeping in any safe deposit vault owned or controlled directly or indirectly by the bank, state or federally chartered savings and loan association or federally chartered savings bank securing such public deposits.

Atch #2

TESTIMONY OF STEPHEN A. ENGLISH
IN SUPPORT OF ADDITIONAL AMENDMENTS TO
SENATE BILL 447

My Name is Stephen A. English. My address is 304 Warren Way, Arkansas City, Kansas. I am presently in the process of forming a non-depository trust company to be located in Wichita, Kansas. For the last 20 years I have been involved in trust work in the capacity as a national bank examiner, and trust officer with two banks located in Kansas.

Last year, Substitute for House Bill Number 2004 was adopted by the Kansas Legislature. This bill amended or repealed more than 80 separate statutes. Last year's bill authorized the establishment of non-depository trust companies. In other words, trust companies can be formed that are not affiliated with a particular banking or financial institution. This bill was intended to give independent trust companies the same fiduciary powers that bank trust departments have traditionally had. Trust companies are required to have the same type of capital structure as banks and are regulated by the Kansas State Banking Commissioner's office just like bank trust departments.

In other words, the bill passed last year was intended to put the new non-depository trust companies on the same level playing field as trust departments owned by commercial banks. To

accomplish this purpose, numerous statutes were reviewed by the bank commissioner's office, the sponsor of last year's Substitute for House Bill Number 2004. Representatives of the financial community, such as myself, as well as members of the state bank commissioner's office and insurance commissioner's office have reviewed the provisions of House Bill No. 2004 with other statutes that pertain to trust powers of commercial banks. It appears that in order to clarify the role of Kansas trust companies, and to maintain the "level playing field", two minor additional statutory changes are suggested pertaining to trust companies when serving as collateral custodians for insurance companies or municipalities in the state of Kansas.

Trust companies by their very nature are specialists in exercising fiduciary powers on behalf of individuals, corporations, and municipalities. For example, if an individual or corporation retains us to manage their investment portfolio, we are held to very high standards of accountability for monitoring the performance of their investments and accounting to our clients for all income received and disbursements. Trust companies are required by statute to handle their clients' affairs in exactly the same manner as commercial bank trust departments.

When a trust company or commercial bank trust department serves as a collateral custodian for securities of an insurance company or municipality, it will be required by law to assure that the securities owned by the insurance company or pledged by a commercial bank as security for deposits of municipalities in that

bank are maintained at adequate levels as required by statute.

We are asking this committee to consider amending Senate Bill 447 to make minor revisions to K.S.A. 9-2103(j) and K.S.A. 9-1405(b).

The proposed amendment to Senate Bill 447 will specifically provide that a non-depository trust company may perform any act as a fiduciary which any Kansas state bank may perform under any provision of the banking, insurance, or any other laws of the state of Kansas. This change, recommended by the Kansas Insurance Commissioner's Department, will clarify that trust companies will have the same fiduciary powers that trust departments have in serving as collateral custodians for securities owned by insurance companies. Thus, non-depository trust companies will now be assured of an equal footing as bank trust departments as was originally intended by Substitute for House Bill 2004 passed last year.

Our amendment to Senate Bill 447 merely provides that non-depository trust companies, as well as Kansas state or national banks may serve as custodian for bonds and securities pledged to municipalities. This change represents a technical correction to Section 44 of last year's Substitute for House Bill Number 2004 where the reference to "trust company" was inadvertently deleted. Again, the inclusion of trust companies in this statute will assure us of a level playing field when compared to the powers of trust departments owned by state or national banks.

I have personally visited with representatives of the Kansas Bank Commissioner's office, the Kansas Insurance Commissioner's office, and the Kansas Bankers Association to develop the language for our suggested amendment to these two statutes for inclusion in Senate Bill 447.

Thank you for giving me the opportunity to present my testimony this afternoon. I will be happy to answer any questions you may have.