

Approved D. Linn 3-4-91
Date

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS

The meeting was called to order by Representative Delbert L. Gross at
Chairperson

3:30 ~~am~~ p.m. on February 13, 1991 in room 527-S of the Capitol.

All members were present except: Representatives Mary Jane Johnson, L. V. "Sam" Roper, and George Teagarden, Excused.

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

Conferees appearing before the committee: Grant Brooks, General Counsel,
Kansas Banking Department

The Chairperson called the meeting to order at 3:30 P.M. and opened the hearings on HB 2134.

Grant Brooks, General Counsel, Kansas Banking Department, stated that HB 2134, an Act relating to banks and banking; concerning branch banking; amending K.S.A. 1990 Supp. 9-1111 and repealing the existing section, should be amended as follows:

The first amendment provides for the relocation of a branch bank. Currently, there is no law specifically addressing the relocation of a branch bank. The Banking Department has been interpreting K.S.A. 9-1804 to include the relocation of a branch bank. However, the correct legislative intent of K.S.A. 9-1804 is the relocation of only the bank's corporate headquarters and not branch banks.

The new language added on lines 18 and 30, broadens the scope of K.S.A. 9-1111 to now include the relocation of existing branches.

The second amendment to K.S.A. 9-1111 allows the State Banking Board to approve an application without a mandatory hearing, when there is no objection to the establishment to the branch bank.

Currently, K.S.A. 9-1111 requires a hearing for every application and the banking department feels this is an inefficient use of the State Banking Board's time and resources as there is no opposition on some applications. The new language requires a hearing be held only if there is a written objection received.

The third amendment adds a specific reference to the financial condition of the applicant bank in the list of criteria used to approve a branch. The SBB desires a specific reference to the applicant bank's financial history and condition be placed in the statute so they may legitimately examine the financial status of an applicant bank when deciding upon an application.

The proposed language specifically authorizes the State Banking Board to examine a bank's financial history and condition and determine whether it is sound.

The fourth amendment to K.S.A. 9-1111 deletes restrictive language concerning the operation of an acquired bank's branches when the bank is acquired via a purchase of assets and an assumption of liabilities. The current statute authorizes, when two state banks merge, the surviving bank may operate the acquired bank's branches as branches of the surviving bank.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS

room 527-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 13, 1991, 19 .

The deletion of the restrictive language concerning P&As from a receiver will allow assuming banks to operate the acquired bank's branches under all types of P&As. (See Attachments #1 & 2)

After discussion the hearing was closed.

The Chairperson opened the hearing on HB 2135.

Grant Brooks, Legal Counsel, Kansas Banking Department, stated HB 2135 amends K.S.A. 9-1118 and repeals K.S.A. 9-1117.

K.S.A. 9-1117 addresses the requirement that bank directors and presidents purchase qualifying shares in order to hold such positions. The statute requires the purchase of \$500 par value of stock. Presumably, the legislative reasoning is to ensure that a director or president that has personal investment at stake in the corporation will be more vigilant in the performance of their responsibilities. However, in today's environment of increasing personal director accountability, including breach of fiduciary duty and environment liability issues, making a director purchase \$500 par value of stock does not ensure a director will be any more vigilant in the performance of his job.

This statute is ineffective and a regulatory nightmare to enforce. There is a problem with buy-back agreements between the director and the institution.

Repealing K.S.A. 9-1117 would eliminate the requirement of qualifying shares for bank directors and presidents.

HB 2135 amends K.S.A. 9-1118 which requires a director or president upon oath, to state they own in "good faith" qualifying shares. This causes this department to routinely examine buy-back agreements because, depending upon how restrictive the agreement is, it may well violate K.S.A. 9-1118. It is believed this regulatory review is inefficient because the purpose to be accomplished by requiring qualifying shares, is accomplished by a person merely taking the responsibilities as a director or president of a bank.

The deletion of the language in K.S.A. 9-1118 that requires bank directors and presidents to swear to good faith ownership of bank stock is needed because the legislative intent of good faith ownership of stock is no longer necessary and also because K.S.A. 9-1117 would be replaced. (See Attachment #1)

The Chairperson closed the hearing on HB 2135.

The Chairperson stated that Stan Lind requested to have a bill introduced that deals with assisting people with financial credit problems. This was discussed earlier and it was thought possibly this was illegal, but after staff review, it was found there was not any legal conflict.

Representative Long moved and Representative King seconded to accept the bill request to assist persons with financial credit problems. The motion carried.

The Chairperson stated that Credit Unions requested that a bill be introduced to mandate that credit unions obtain national insurance.

Representative Shallenburger moved and Representative Adam seconded this be accepted as a committee bill. The motion carried.

The Chairperson stated that a bill has been requested concerning clarification of the uniform consumer credit code. This is just clean-up.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,
room 527-S, Statehouse, at 3:30 ~~xx~~ p.m. on February 13, 1991

Representative Shallenburger moved and Representative Minor seconded that this bill be accepted as a Committee Bill. The motion carried unanimously.

Representative Shallenburger requested that there be a change in the interstate banking laws; stating that he had talked to Representative Roe and current privilege tax may not work and would like to have this studied.

Representative Graeber moved and Representative Cates seconded to accept this as a committee bill. The motion carried.

Representative Long moved and Representative Watson seconded that the minutes of the February 7 meeting be approved. The motion carried.

The meeting adjourned at 4:30 P.M.

Testimony

Before

The House Committee on Commercial
and Financial Institutions

by Conferee:

Grant L.C. Brooks, General Counsel

Kansas Banking Department

The State Banking Department requests the Committee favorably consider House Bills 2134 and 2135.

House Bill 2134 amends K.S.A. 9-1111: the branch banking statutes. This bill establishes four amendments to this statute.

The first amendment provides for the relocation of a branch bank. Currently, there is no law specifically addressing the relocation of a branch bank. This department has been interpreting K.S.A. 9-1804 to include the relocation of a branch bank. However, the correct legislative intent of K.S.A. 9-1804 is the relocation of only the bank's corporate headquarters and not branch banks.

The new language added on lines 18 and 30, broadens the scope of K.S.A. 9-1111 to now include the relocation of existing branches.

The second amendment to K.S.A. 9-1111 allows the State Banking Board to approve an application without a mandatory hearing, when there is no objection to the establishment of the branch bank.

Currently, K.S.A. 9-1111 requires a hearing for every application that is filed to establish a branch. On some applications there is no opposition to the establishment of a branch and the requirement to hold a hearing is an inefficient use of the State Banking Board's time and resources.

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Therefore, by adding new subsection (f) which requires the applicant bank publish a Notice of Intent to establish a branch bank, this allows a comment period for interested parties to voice their objections concerning the proposed branch. (See, page 2, line 6)

Also, old subsection (f), now (g), has new language that requires the State Banking Board hold a hearing only if a written objection to an application is received. (See, page 2, line 19)

The third amendment to K.S.A. 9-1111 adds a specific reference to the financial condition of the applicant bank in the list of criteria used to approve a branch bank. The State Banking Board desires that a specific reference to the applicant bank's financial history and condition be placed in the statute so they may legitimately examine the financial status of an applicant bank when deciding upon an application. It is obvious that the financial condition of a bank is a legitimate concern when a bank is embarking on a new venture, but without a specific reference in this statute, the State Banking Board is reluctant to formally use that as a reason for denial. Instead, the State Banking Board uses the second criterion of the statute that addresses the usefulness and success of the proposed branch.

would allow if wanted - would not have to have hearing.

The proposed language specifically authorizes the State Banking Board to examine a bank's financial history and condition and determine whether it is sound. (See, page 3, line 8)

The fourth amendment to K.S.A. 9-1111 deletes restrictive language concerning the operation of an acquired bank's branches when the bank is acquired via a purchase of assets and an assumption of liabilities.

The current statute authorizes, when two state banks merge, the surviving bank may operate the acquired bank's branches as branches of the

surviving bank. This is also true when the acquired bank is acquired via a purchase and assumption from a receiver. However, the statute has no provision authorizing a bank to operate an acquired bank and the bank's branches when the acquisition is by a normal purchase and assumption. The State Banking Department, as a departmental policy, has interpreted the merger statute to include P&As, provided the shell corporation surrender its certificate of authority to engage in the banking business. However, it is obviously more appropriate to amend the branching statute to specifically provide for this type of acquisition and in light of the trend in Kansas banks of corporate contraction, this type of acquisition shall become more common.

Therefore, the deletion of the restrictive language concerning P&As from a receiver will allow assuming banks to operate the acquired bank's branches under all types of P&As.

House Bill 2135 amends K.S.A. 9-1118 and repeals K.S.A. 9-1117.

K.S.A. 9-1117 addresses the requirement that bank directors and presidents purchase qualifying shares in order to hold such positions. This statute requires the purchase of \$500 par value of stock.

Presumably, the legislative reasoning is to ensure that a director or president that has a personal investment at stake in the corporation will be more vigilant in the performance of their responsibilities. However, in today's environment of increasing personal director accountability, including breach of fiduciary duty and environment liability issues, making a director purchase \$500 par value of stock does not ensure a director will be any more vigilant in the performance of his job.

Beyond the ineffectiveness of this statute, it is a regulatory nightmare to enforce. This is especially true with problem banks. These banks are generally in need of a stronger board of directors. However, it is difficult enough for a problem bank to hire new directors because of new liability standards, let alone find a director that will also purchase \$500 par value of stock.

Another problem exists with buy-back agreements between the director and the institution. Most state banks in Kansas are closely held corporations. Therefore, most banks have buy-back agreements that routinely limit voting and dividend rights and give the bank first right of refusal. In fact, some agreements are so restrictive that they require this department's close scrutiny because of the requirements of K.S.A. 9-1118.

Therefore, the repeal of K.S.A. 9-1117 would eliminate the requirement of qualifying shares for bank directors and presidents.

House Bill 2135 amends K.S.A. 9-1118 which requires a director or president, upon oath, to state they own in "good faith" qualifying shares. This causes this department to routinely examine buy-back agreements because, depending upon how restrictive the agreement is, it may well violate K.S.A. 9-1118. The State Banking Department believes that this regulatory review is inefficient because the purpose to be accomplished by requiring qualifying shares, is accomplished by a person merely taking the responsibilities as a director or president of a bank.

Therefore, the deletion of the language in K.S.A. 9-1118 that requires bank directors and presidents to swear to good faith ownership of bank stock is needed because the legislative intent of good faith ownership of stock is no longer necessary and also because K.S.A. 9-1117 would be repealed.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

the board, and the board determines all of such matters favorably in two or more such applications, the board may approve the application of the proposed bank or trust company which it determines will best serve the needs of the territory sought to be served. If one or more such applications seeking to serve a territory are pending before the board, and the board has determined all of such matters favorably in one or more of such applications, and there also is pending before the board an application of an existing bank or trust company to change its place of business to serve the same territory which the board determines should be approved, and the board determines that there is public need for only one bank or trust company to serve the territory, the board may approve the application of the existing bank or trust company to change its place of business and disapprove the application or applications for incorporation and authority to do business. (L. 1989, ch. 48.)

9-1803. Expenses of examination and investigation; payment; use and disposition of moneys received. All expenses incurred in making any examination and investigation under K.S.A. 9-1802 shall be paid by the applicants, who shall pay one thousand dollars (\$1,000) to the commissioner to defray all such expenses. The board may require an additional payment of not to exceed five hundred dollars (\$500) at any time it deems it necessary. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates and any unused balance shall be transferred to the state general fund. Any members of the board who make such an examination or investigation shall be paid the sum of thirty-five dollars (\$35) per diem for the time they actually are engaged in performing their duties as members of such board, and in addition thereto, shall be paid all their actual and necessary expenses incurred in the performance of such duties from such funds. (L. 1975, ch. 44.)

9-1804. Place of business; change of; application, investigation and approval; expenses of examination and investigation; payment; use and disposition of moneys received. No bank or trust company incorporated under the laws of this state shall change its place of business, from one city or town to another or from one location to another within the same city or town, without the prior approval of the state banking board. Any such bank or trust company desiring to change its place of business shall file written application with the board in such form and containing such information as the board shall require. The board shall examine and investigate the application, and shall inquire into the public necessity for such bank or trust company in the community wherein it is proposed to locate the same, and shall approve or disapprove the application. The expenses of such examination and investigation shall be paid by the bank or trust company which shall deposit with the commissioner the sum of \$500 and such further sums as are required by the commissioner. Any members of the board who make

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such an examination or investigation shall be paid the sum of \$35 per diem for the time they actually are engaged in performing their duties as members of such board, and in addition shall be paid all their actual and necessary expenses incurred in the performance of such duties from such funds. The commissioner shall remit all amounts received under this section to the state treasurer who shall deposit the same to a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates, and any unused portion of such deposit shall be refunded to the bank or trust company. (L. 1989, ch. 48.)

9-1805. **Removal of officer or director; hearing; judicial review.** (a) If the board finds in accordance with this section that any officer or director of any bank or trust company has been dishonest, reckless or incompetent in performing duties as such officer or director or willfully or continuously fails to observe any legallymade order of the commissioner or board, the board may remove such officer or director.

(b) Prior to removing such officer or director, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act.

(c) The board may recess or continue any hearing from time to time. If upon the conclusion of such hearing the board determines that the officer or director has been dishonest, reckless or incompetent in performing duties as such an officer or director, or has willfully or continuously failed to comply with any legallymade order of the commissioner or board, the board may order the officer's or director's office forfeited and vacated. The board shall mail a copy of its order to the bank or trust company which such officer or director was serving. During the time from and after any legallymade order by the commissioner and upheld by the board, or order made by the board, and not complied with by any officer or director the board may place a special deputy in the bank up to and until the final disposition of the order by compliance or final disposition by order of the district court.

(d) Any action of the board pursuant to this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. If on review the court upholds an order of the board removing an officer or director or if review of such an order is not sought within the time allowed by law, the office of the officer or director shall be forfeited and vacated by law and such office shall then be filled in accordance with existing statutes and bylaws by another person or persons. (L. 1988, ch. 356.)

9-1806. **Maximum interest rate established by board; notice and hearing.** The state recognizes that a bank may pay an excessive rate of interest on deposits and that a continuation thereof will result in an impairment of its capital stock and a loss to its depositors. Hence, it is declared to be the policy of this state that all depositors and creditors of a bank should be protected therefrom and for that purpose the board shall have authority to prescribe the maximum rate of interest to be paid by any bank on its