

Approved De Du 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 14, 1991 in room 527-S of the Capitol.

All members were present except: Representatives Joan Adam, Jim Cates, Mary Jane Johnson 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 hearing on HB 2132.

Grant Brooks, General Counsel, Kansas Banking Department, testified that HB 2132 amends K.S.A. 9-909. This statute addresses rights and immunities of preferred stockholders. The middle paragraph of this statute has a convoluted sentence that begins with permissive language, but then switches to mandatory language, and finally ends with a permissive directive: "as may be provided in the articles of incorporation."

On review of the content of this sentence, it is now obsolete because the General Corporation Code, at K.S.A. 17-6401, already permits a corporation to give preferred stock any type of rights the corporation desires. Since this language is confusing in meaning and duplicates the General Corporation, it is best deleted.

HB 2132 amends K.S.A. 9-1101; the general banking powers statute. It was discovered last year as a result of a FDIC examination that many Kansas banks own stock in Kansas Bankers Surety Company. Kansas Bankers Surety provides all types of financial institution liability insurance policies to state banks. This company was incorporated in 1990 by a number of state banks. Also at that time state banks would not own such stock. Therefore, the state banks formed trusts to hold the stock. The trustee was usually the bank's cashier. After a time the trustees died or moved on and the stock was apparently put in the name in the bank and was not listed as an asset of the respective bank. So, today 67 stockholders of Kansas Bankers Surety are state banks and hold 55,692 shares worth \$1,670,760. The state bank shareholders hold this investment as a nonbook asset.

It would serve no purpose to force state banks to divest themselves of this nonbook stock and would, in fact, harm Kansas Bankers Surety. Therefore, the new language on page 5, line 15, would allow state banks to hold, as an asset, stock in a Kansas insurance company incorporated prior to 1910 which only provides insurance to financial institutions. The purpose for this restrictive language to ensure that this new power codifies only the status quo and does not allow state banks to purchase stock in any insurance company.

One side benefit of this amendment is it would allow the 67 banks to show this stock as an asset. This would increase the capital of the 67 state banks by either their cost for the stock or market value which ever is lower. (See Attachments #1, 2, & 3)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMERCIAL & FINANCIAL INSTITUTIONS,
room 527-S, Statehouse, at 3:30 ~~xx~~ m./p.m. on February 14, 19 91

After discussion, the Chairperson closed the hearing on HB 2132.

The Chairperson opened the hearing on HB 2133 and Grant Brooks, General Counsel, Kansas Banking Department, stated that HB 2133 was an Act relating to banks and banking; concerning preferred stock thereof; amending K.S.A. 1990 Supp. 9-909 and repealing the existing section. (See Attachment #1)

Mr. Brooks stated the middle paragraph was permissive and hard to understand and was not necessary so the Kansas Banking Department recommended deleting lines 17-22.

After discussion, the Chairperson closed the hearing on HB 2133.

The meeting adjourned at 4:30 P.M.

Date: 2/14/91

GUEST REGISTER

HOUSE

COMMERCIAL & FINANCIAL INSTITUTIONS COMMITTEE

NAME

ORGANIZATION

ADDRESS

NAME	ORGANIZATION	ADDRESS
Jim Maag	Ks Bankers Assn	Topeka
Haley Juhn	"	"
JMM Pank	Ks Bankers Society	Topeka
Chuck Tunde	" "	"
Mike Heitman	Ks Banking Dept.	Topeka
Grant Brock	" " "	"

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 2132 and 2133.

House Bill 2132 amends K.S.A. 9-909. This statute addresses rights and immunities of preferred stockholders. However, the middle paragraph of this statute has a convoluted sentence that begins with permissive language, but then switches to mandatory language, and finally ends with a permissive directive: "as may be provided in the articles of incorporation."

Upon review of the content of this sentence, it is now obsolete because the General Corporation Code, at K.S.A. 17-6401, already permits a corporation to give preferred stock any type of rights the corporation desires.

Consequently, as this language is confusing in meaning and duplicates the General Corporation, it is best deleted.

House Bill 2132 amends K.S.A. 9-1101; the general banking powers statute. During last year, as a result of a FDIC examination, it was discovered that many Kansas banks own stock in Kansas Bankers Surety Company. However, K.S.A. 9-1101 does not authorize state banks to hold such an equity investment. To completely understand this situation, some history is needed.

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Kansas Bankers Surety provides all types of financial institution liability insurance policies to state banks. This company was incorporated in 1909 by a number of state banks. Also at that time, state banks would not own such stock. Therefore, the state banks formed trusts to hold the stock. The trustee was usually the bank's cashier. Over time the trustees died or moved on and the stock was apparently put in the name of the bank and was not listed as an asset of the respective bank. So, today 67 stockholders of Kansas Bankers Surety are state banks and hold 55,692 shares worth \$1,670,760. The state bank shareholders hold this investment as a nonbook asset.

It would serve no purpose to force state banks to divest themselves of this nonbook stock and would, in fact, harm Kansas Bankers Surety.

Therefore, the new language on page 5, line 15, would allow state banks to hold, as an asset, stock in a Kansas insurance company incorporated prior to 1910 which only provides insurance to financial institutions. The purpose for this restrictive language is to ensure that this new power codifies only the status quo and does not allow state banks to purchase stock in any insurance company.

Of course, one side benefit is this amendment would allow the 67 banks to show this stock as an asset. This would increase the capital of the 67 state banks by either their cost for the stock or market value which ever is lower.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

GLCB:dsl

Cross References to Related Sections:

Insurance on life of directors, officers, employees or stockholders, see 17-6102 (16).

Loans to officers or employees, see 17-6303.

Actions against directors, officers or stockholders, see 17-7101.

Research and Practice Aids:

Corporations \approx 308(1).

C.J.S. Corporations § 803.

Law Review and Bar Journal References:

"Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 557 (1979).

CASE ANNOTATIONS

1. Accounting firm which conducted audit of corporation was servant of corporation and entitled to indemnification for costs. Koch Industries, Inc. v. Kosko, 494 F.2d 713, 725.

Article 64.—STOCK AND DIVIDENDS**Cross References to Related Sections:**

Regulation of "take-over bids" by securities commissioner, see 17-1276 to 17-1284.

Law Review and Bar Journal References:

"Close Corporations and the Kansas General Corporation Code of 1972," Edwin W. Hecker, Jr., 22 K.L.R. 489 (1974).

"Legal Framework Governing the Kansas Non-Profit Corporation," Fred Lovitch, 48 J.B.A.K. 217 (1979).

17-6401. Classes or series of stock; rights, voting powers, designations, preferences, qualifications, limitations or restrictions; redemption; dividends; conversions and exchange; stock certificates, requirements; issuance of stock where rights, voting powers, designations, preferences, qualifications, limitations or restrictions not stated in articles; uncertificated shares. (a) Every corporation, whether or not organized for profit, may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any

such class or series of stock may be made dependent upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided in this act shall apply to all or any such classes of stock.

(b) Any stock which is entitled upon any distribution of the corporation's assets, whether by dividend or by liquidation, to a preference over another class or series of stock may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event. Any stock of a regulated investment company registered under the investment company act of 1940 (15 U.S.C.A. 80a-1 et seq.), as heretofore or hereafter amended, may be given the right to require the corporation to redeem or repurchase the stock at the option of the holder of the stock, provided such redemption or repurchase would not impair or cause a further impairment of the capital of the corporation. Any stock of a corporation which has a license or franchise from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise or membership is conditioned upon some or all of the holders of its stock possessing prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it. Any stock which may be made redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(c) The holders of preferred or special stock

of any class or entitled to receive such conditions stated in the resolution or resolution of such stock adopted as hereinabove provided, or in such resolution on any other class or series of stock, relative as shall be stated. When dividends on such stocks, if a preference to which have been paid payment, a dividend classes or series of the remaining available for dividend provided.

(d) The holder of stock of any class may be entitled to such dividend, or upon an incorporation of the corporation or liquidation provided for in the articles of incorporation as hereinabove provided.

(e) At the time of the incorporation specified even if any series of stock is issued into or exchanged for another class or classes of stock or any other corporation, at such rate or rates and with such adjustments as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(f) If any class of stock is issued more than one series of stock, the articles of incorporation, including, optional or other special rights, qualifications, limitations or preferences of such stock, or summarized certificate which shall be presented to the holder of such stock. Ex K.S.A. 17-64

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of any class or of any series thereof shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, shall have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as elsewhere in this act provided.

(d) The holders of the preferred or special stock of any class or of any series thereof shall be entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(e) At the option of either the holder or the corporation or upon the happening of a specified event, any stock of any class or of any series thereof may be made convertible into or exchangeable for shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

(f) If any corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation shall issue to represent certificated shares of such class or series of stock. Except as otherwise provided in K.S.A. 17-6426 and amendments thereto, in

lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation issues to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this section or K.S.A. 17-6406, subsection (a) of K.S.A. 17-6426 or subsection (a) of K.S.A. 17-6508, and amendments thereto, or with respect to this section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences or rights, or both. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

(g) When any corporation desires to issue any shares of stock of any class or of any series of any class of which the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, shall not have been set forth in the articles of incorporation or in any amendment thereto, but shall be provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series shall be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003 and amendments thereto. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such series to which such resolution or resolutions apply may be increased, but not above the total number of authorized shares of the

class or series or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed, acknowledged, filed and recorded setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume the status which they had prior to the adoption of the first resolution or resolutions. When no share of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding and that none will be issued may be executed, acknowledged, filed and recorded in accordance with K.S.A. 17-6003, and amendments thereto, and, when such certificate becomes effective, it shall have the effect of eliminating from the articles of incorporation all reference to such class or series of stock. Unless otherwise provided in the articles of incorporation, if no shares of stock have been issued of a class or series of stock established by a resolution of the board of directors, the voting powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, may be amended by a resolution or resolutions adopted by the board of directors. A certificate which (1) states that no shares of the class or series have been issued, (2) sets forth a copy of the resolution or resolutions and (3) if the designation of the class or series is being changed, indicates the original designation and the new designation, shall be executed, acknowledged, filed, recorded and shall become effective, in accordance with K.S.A. 17-6003, and amendments thereto. When any certificate filed under this subsection becomes effective, it shall have the effect of amending the articles of incorporation, except that neither the filing of such certificate nor the filing of restated articles of incorporation pursuant to K.S.A. 17-6605, and amendments thereto, shall prohibit the board of directors from subsequently adopting such resolutions as authorized by this subsection.

(h) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by res-

olution that some or all of any or all class and series of its stock shall be uncertificated shares, but such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subsection (f). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

History: L. 1972, ch. 52, § 25; L. 1980, ch. 399, § 2; L. 1988, ch. 99, § 9. Personal and amend., L. 1988, ch. 100, § 9. May 1.

Source or prior law:

17-3201, 17-3202, 17-3203, 17-3204, 17-3205 and 17-3215.

KANSAS COMMENT

Subsections (a) to (e), inclusive, of this section are identical to the corresponding subsections of Sections 151 and to the provisions of prior sections 17-3201, 17-3202, 17-3203 and 17-3204, relating to the classes of stock which may be issued, the preferences and the convertibility and exchangeability of preferred or equity stocks. Subsections (f) and (g) of this section are identical to Delaware § 151 (f) and (g), respectively. Subsection (f) also corresponds to the last paragraph of § 227 which required that, where the corporation issues shares of any class or series of stock, the various powers, rights, restrictions, etc. thereof had to be set forth and summarized on the back of the stock certificate. This subsection provides an alternative by permitting in lieu of such information a statement on the certificate that such information will be furnished a stockholder on request.

Subsection (g) and 17-3205 are very similar in providing for the issuance of stock where the various powers, rights, restrictions, etc. thereof have not been set forth in the articles of incorporation, but shall have been provided by a resolution of the board of directors.

Cross References to Related Sections:

- Provisions in articles of incorporation concerning ownership of stock, see 17-6002 (a)-(c).
- Dividends on partly paid shares, see 17-6006.
- Issuance of additional shares of stock, see 17-6007.
- Declaration and payment of dividends, see 17-6008.
- Method of paying dividends, see 17-6020.
- Restrictions on transfer of securities, see 17-6021.
- Redemption, purchase or retirement of shares, see 17-6603.
- Reduction of capital, see 17-6604.
- Effect of increase or decrease in capital of a corporation or its stockholders, directors or officers, see 17-7103.
- Issuance of stock by close corporations, see 17-7104.

Research and Practice Aids:
 Corporations 60 et seq.
 K.S.A. Corporations §§ 192

17-6402. Consideration for the issuance of stock. The consideration to be received by the corporation for the issuance of stock shall be in cash or in property, or in any combination thereof, and shall be determined by the board of directors. The consideration for the issuance of stock shall be in cash or in property, or in any combination thereof, and shall be determined by the board of directors. The consideration for the issuance of stock shall be in cash or in property, or in any combination thereof, and shall be determined by the board of directors. The consideration for the issuance of stock shall be in cash or in property, or in any combination thereof, and shall be determined by the board of directors.

History: L. 1972, ch. 52, § 26. Rev. Stat. 1961, § 10, M.A.S. 1961, § 10, M.A.S. 1961, § 10. May 1.

Source or prior law: 17-3206.

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 Delaware § 152 and its amendments relating to the issuance of stock and the manner of payment of the consideration therefor.

Cross References to Related Sections:
 Effect of consideration for the issuance of stock, see 17-6402.
 Dividends on partly paid shares, see 17-6006.
 Issuance of additional shares of stock, see 17-6007.
 Declaration and payment of dividends, see 17-6008.
 Method of paying dividends, see 17-6020.
 Restrictions on transfer of securities, see 17-6021.
 Redemption, purchase or retirement of shares, see 17-6603.
 Reduction of capital, see 17-6604.
 Effect of increase or decrease in capital of a corporation or its stockholders, directors or officers, see 17-7103.
 Issuance of stock by close corporations, see 17-7104.

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THE KANSAS BANKERS SURETY COMPANY

By Bonnie Pinick

This year the Kansas Bankers Surety Company has been in business for eighty-one years.

Because this is the only bonding company owned by the banks and bankers it serves, it might be interesting to trace some of the history of the company. The Company today plays a unique role of serving the banks in eleven mid-western states because of the foresight of a few leading bankers in the state of Kansas.

In 1909, the Kansas Legislature enacted a law establishing the "bank depositor guaranty fund of the state of Kansas." The purpose was to guarantee depositors against the insolvency of the insured institution. The fund was authorized by law, but was created by the funds of the participating members.

Membership into the guaranty fund was purely voluntary. Even though state law permitted national banks to participate, federal law prohibited national banks from membership. In addition, many state banks chose not to become members of the fund. The result was a division of banks in Kansas into three groups: state insured banks, state uninsured banks and national uninsured banks. Naturally, the banks in the latter two groups had more than an idle curiosity as to what the impact of the insured banks would be. Would depositors only put their money into insured banks? Not wanting to wait to see what would happen, leaders in the banking community began taking steps to meet the situation should it become necessary.

On April 29, 1909 the Bankers Deposit, Guaranty and Surety Company was formed and on January 10, 1910 began writing business. The purpose of the company was twofold: to issue surety bonds guaranteeing the deposits of the participating banks; and to execute fidelity bonds on behalf of individual bank officers and employees.

The company continued writing surety and fidelity bonds until 1922. At that time, the insured banks deemed it no longer necessary or profitable to continue writing deposit insurance. The company was reorganized with all of the capital stock of the company placed in over 700 Kansas banks on a pro-rata basis. The company name was changed to the Kansas Bankers Surety Company.

The company continued to grow over the years and to serve the needs of Kansas banks. In 1979 the company had all of the business available or that they wanted to write in Kansas. So the company considered writing other coverages besides Bond & D&O or expanding geographically.

The company decided to expand geographically in 1980 into Missouri, 1981 into Nebraska and Wisconsin, 1985 into Oklahoma, Colorado and Wyoming, 1986 into Iowa and South Dakota and in 1988 into Minnesota and Illinois. In 1910, the premiums written were \$28,446. In 1989, the premiums written were over \$20,000,000.

Of the approximate 12,000 banks in the United States, the company writes Financial Institution Bonds and Directors and Officers Policies for 2,448 banks. That represents roughly 1 out of every 5 banks in the United States, although all of the insured banks are community banks in the Midwest.

Kansas Bankers Surety Company also provides security training programs and seminars for bank employees and risk/exposure surveys for individual banks.

The company has operated profitably over the past 80 years and has returned profits to shareholders by means of dividends. In 1979 when the company expanded into other states there were 32,000 shares of stock outstanding which were held by 454 shareholders with capital and surplus of \$1,572,869. By the spring of 1990 the capital and surplus was \$13,507,260. Most of the current 502 stockholders of the company are banks or active bankers. A few shares of the stock, which have passed through the families of early Kansas bankers, are now spread throughout the country. There are stockholders living as far away as Hawaii.

From the beginning in 1909 to the current date, the Board of Directors of the Kansas Bankers Surety Company have been active bankers.

The purpose of Kansas Bankers Surety Company is to provide insurance protection to banks for losses which may be incurred under the terms of various policies issued by the company. In its 80 years of operation, the company is known for its prompt payment of direct claims to banks. The first embezzlement claim was in the amount of \$738.65. Claims incurred in 1989 were in excess of \$6,000,000. In the last 20 years, one reason for the dramatic increase in claims has been in employee fidelity and, in particular, senior management embezzlement. This is true nationwide.

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