

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:07 a.m. on January 18, 1995 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Judi Stork, Deputy State Bank Commissioner

Others attending: See attached list

Senator Lawrence made a motion, seconded by Senator Clark, to approve the minutes of the meeting of January 17 as submitted. The motion carried.

The hearing was opened on SB 21, concerning how banks and trust companies are assessed annual fees. Judi Stork, Deputy State Bank Commissioner, appeared as a proponent of this legislation, stating that this legislation would accomplish three things: 1) Allow the Bank Commissioner's office to use quarterly FDIC reports; 2) Establish a specific cut-off date for paying an annual assessment; and 3) Provide that when banks consolidate, the surviving entity must pay the assessment on merged assets. (Attachment #1.)

Chairman Bond pointed out that the Banking Department is fee funded and no money to operate that department comes from general state funds. In response to Senator Lee's question, it was clarified that the second portion of the bill would not change fee structure, merely clarify the cut-off date. Senator Clark questioned whether the state could assess fees on assets held by out of state banks with branches in our state and Ms. Stork advised that only assets held by banks within our state can be assessed.

Ms. Stork requested that the bill be amended to make the legislation effective upon publication in the Kansas Register. There being no further questions or conferees, the hearing was closed.

Senator Petty made a motion to amend the bill to reflect that the effective date will be the date of publication in the Kansas Register. Senator Steffes seconded the motion. The motion carried.

Senator Lawrence moved to pass the bill favorably as amended. Senator Petty seconded the motion; the motion carried. Senator Steffes will carry this bill.

The hearing was opened on SB 23. Ms. Stork also appeared as a proponent of this legislation which would provide the Bank Commissioner with the power to grant state chartered banks and branches the same abilities of nationally chartered banks. (Attachment #2.) The intent of this legislation is to establish parity and competitive equality between state and national banks. The bill also clarifies language relating to trust companies and trust departments. Ms. Stork requested further amendment as follows: On page 2, line 25, to insert, "This power shall include the power to authorize any or all Kansas trust companies to engage in any trust related activity in which a trust department of a national bank could engage at the time authority is granted," (Attachment #3.), and to make the effective date the date of publication in the Kansas Register.

Senator Steffes moved to amend the bill as requested; Senator Lawrence seconded the motion. The motion carried.

There were no further questions and no other conferees; the hearing was closed. Senator Lee made a motion to pass the bill favorably as amended. Senator Steffes seconded the motion. The motion carried. Senator Steffes will carry this bill on the Senate floor.

The chairman opened the hearing on SB 24, which amends KSA 74-3006 to add language to allow the Bank Board authority to meet in executive session to discuss confidential information. Ms. Stork appeared before the committee to explain this legislation also. (Attachment #4.) Chairman Bond explained the reference to the open meetings act and the confidentiality act. There being no questions and no other conferees, the hearing was closed.

Senator Lawrence moved to pass the bill favorably; Senator Steffes seconded the motion. The motion carried. Senator Bond will carry this bill.

CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on January 18, 1995.

The hearing was opened on SB 25, which defines "student banks," and provides exemption to student banks from what is considered to be the "business of banking" and, therefore, from the provisions of the banking code. Ms. Stork also appeared to explain this legislation to the committee. (Attachment # 5). Following discussion of who should oversee operation of student banks and whether the bill should be broadened to include other groups, the committee agreed to leave the bill as is for the present time. Ms. Stork requested that this legislation also be effective upon date of publication in the Kansas Register. Senator Petty moved to amend the bill as requested; Senator Praeger seconded the motion. The motion carried.

Senator Praeger made a motion to move the bill favorably as amended. Senator Petty seconded the motion. The motion carried. Senator Bond will carry this bill.

The committee adjourned at 9:50 a.m. The next meeting is scheduled for January 19, 1995.

STATE OF KANSAS
BILL GRAVES
GOVERNOR



Frank D. Dunnick
Bank Commissioner

Judi M. Stork
Deputy Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner

William D. Grant, Jr.
General Counsel

Ruth E. Glover
Administrative Officer

OFFICE OF THE
STATE BANK COMMISSIONER

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

JANUARY 18, 1995

Mr. Chairman and Members of the Committee:

I am here today on behalf of Commissioner Dunnick and the Office of the State Bank Commissioner to testify on behalf of four Senate Bills.

The first, **Senate Bill 21**, amends K.S.A. 9-1703, a statute that governs how banks and trust companies are assessed. There are three substantive changes made to this statute via this proposal. First, beginning on line 26, we are asking to utilize the March 31 **FDIC** call report information for calculating our assessment. Currently, the Office of the State Bank Commissioner (OSBC) receives call report data in paper form. The FDIC receives the same paper data and inputs such into a data base which is accessible to our agency through a computer network. Because such data is much more readily usable via the computer, the paper copies kept in our office are seldom used. The quarterly FDIC information is downloaded into our assessment calculation and the annual bank assessments are calculated via computer. We have been utilizing this process for approximately four to five years.

The second substantive change can be found on page two, beginning on line 12. This amendment adds language to establish a specific cutoff date for bank existence for paying an annual assessment. If the banks are in existence as of June 30 and December 31, one-half of their assessment is due and payable for the respective half of the coming year. Because of the numerous mergers that are occurring in the banking industry, this amendment is necessary to provide financial institutions with a clear notice of what dates must be met for filing their merger documents, with the Secretary of State's office, to avoid assessment fees for the coming year. Additionally, for budgetary purpose for the OSBC, we have relied on assessments from banks who are operating as state chartered institutions only to find out later they have merged into a national association and refuse to pay any assessment.

The third substantive change can be found at the top of page three under new subsection (e). This amendment concerns assessments when a state chartered bank merges with and into another state chartered bank. If this occurs between March 31 (the date on which our assessments are based) and June 30 (the dates the banks are assessed), the assessment of those banks merged out of existence are lost, even though the assets remain in the state chartered system. An example may illustrate this best. We have two state chartered banks--Bank ABC with \$20,000,000 in assets and Bank XYZ with \$30,000,000 in assets. Both of these institutions exist on March 31. On May 25 these institutions merge and only ABC bank remains. On June 30, ABC is a state chartered bank with \$50,000,000 in assets; however, the statute requires us to assess ABC based on their March 31 assets of \$20,000,000. XYZ is no longer in existence therefore we can not assess them. The \$30,000,000 in assets are still in the state chartered system, however, there are no provisions allowing us to assess ABC for those \$30,000,000 in assets. The new language in subsection (e) will allow us to correct that problem.

We respectfully request this legislation be effective upon publication in the Kansas Register to eliminate confusion that may occur when we are establishing assessments, in June, for the coming year.

Senate 7141 1/18/95
Attachment 1

Senate Bill 23 proposes amendment of K.S.A. 9-1715, commonly known as the "wild-card" statute. The current provisions of the statute were implemented to protect the competitive equality of state and national banks operating in Kansas. The statute allows the state bank commissioner to issue special orders authorizing state banks to engage in any activity that is permitted for national banks by federal authority. The proposed amendments contained in Senate Bill 23 are designed to modernize the statute in two ways.

First, the substantive portions of the current subsections (a) and (b) have been combined into a single section as proposed subsection (a) of the bill. The original version of the statute was passed in 1967, and consisted only of a portion of what is now subsection (a). The original 1967 enactment was based on the concept of preserving competitive equality among banks but only provided authority to issue a special order that applied to a specific bank. Consequently, if national banks in Kansas were authorized to engage in a particular activity each state bank which faced unfair competition in their community would be required to request a special order and a special order for each state bank would be necessary to provide parity.

This approach may have been practical in 1967, when most banks' trade territories were relatively compact, resulting in fewer competitive relationships between state and national banks. However, as banking evolved in Kansas, and the reach of banking operations broadened, an activity of a single national bank may have created the need for several special orders to preserve parity for surrounding state banks. In 1975, the legislature added current subsection (b) which allows the issuance of a special order of general application to provide statewide parity to all state chartered banks in Kansas.

Senate Bill 23 proposes to combine these two sections. Because of the development of concepts such as statewide branching, interstate banking, and the recently enacted Riegle-Neal Interstate bill, the "geography" of banking in Kansas shows very little resemblance to the environment of 1975, when the separate subsections of K.S.A. 9-1715 were devised. The need for a special order that applies to only one state bank in a particular community is almost inconceivable and the utility of separate subsections has diminished. In fact, the existence of the two similar provisions has created some confusion on the part of the public and the banking community regarding their distinct meanings. Therefore, the proposed language has been combined in broad terms to allow either a general or specific special order, preserving the availability of both types of orders. This should relieve some confusion created by the existence of two subsections while maintaining the commissioner's ability to protect the competitive equality of all state banks in Kansas.

The second substantive change contained in Senate Bill 23 involves the repeal of the current subsection (d). Subsection (d) is an antiquated provision that prevents a special order from providing parity to our state banks on the issue of branching. This provision was added to K.S.A. 9-1715 in 1975 at a time when Kansas did not allow bank branches. During the several years prior to 1975, there had been rigorous debate in Kansas over the acceptability of branching in our state and to that point full-fledged branches continued to be illegal. From 1975 until today, we have seen branches become commonplace on a statewide basis.

Senate 7141 1/18/95

Attachment 2

1 protect the welfare of state banks or trust companies and promote com-
 2 petitive equality of state and national banks. Such special order shall pro-
 3 vide for the effective date thereof and upon and after such date shall be
 4 in full force and effect until amended or revoked by the commissioner,
 5 with the prior approval of the state banking board, by subsequent special
 6 order. Upon issuance of a special order, the commissioner promptly shall
 7 mail copies to all state banks and trust companies. The issuance of such
 8 special orders shall not be subject to the provisions of article 4 of chapter
 9 77 of the Kansas Statutes Annotated.

10 (e) The commissioner, at the time of issuing any special order pur-
 11 suant to this section, shall submit a written report to the president and
 12 the minority leader of the senate and to the speaker and the minority
 13 leader of the house of representatives.

14 (d) The commissioner shall not have power under this section to au-
 15 thorize any state bank or trust company to establish or operate any branch
 16 bank, except as provided in K.S.A. 9-1111, and amendments thereto.

17 (a) The commissioner shall have the power to authorize any or all state
 18 banks ~~or trust companies~~ to engage in any activity in which such banks
 19 ~~or trust companies~~ could engage were they operating as national banks
 20 at the time such authority is granted, including but without limitation
 21 because of enumeration the power to do any act, and own, possess and
 22 carry as assets, property of such character including stocks, bonds or other
 23 debentures which, at the time authority is granted, is authorized under
 24 federal laws and regulations to be done by national banks notwithstanding
 25 any restriction elsewhere contained in the statutes of the state of Kansas.
 26 This power shall be in addition to any and all other powers granted to
 27 the commissioner.

28 (b) The commissioner shall exercise the power granted in subsection
 29 (a) by the issuance of a special order if the commissioner deems it rea-
 30 sonably required to preserve and protect the welfare of a particular in-
 31 stitution, or if the commissioner deems it reasonably required to preserve
 32 the welfare of all state banks or trust companies and to promote compet-
 33 itive equality of state and national banks. Such special order shall provide
 34 for the effective date thereof and upon and after such date shall be in full
 35 force and effect until amended or revoked by the commissioner. Promptly
 36 following issuance, the commissioner shall cause a copy of each special
 37 order to be mailed to all state banks and trust companies.

38 (c) The commissioner, at the time of issuing any special order pur-
 39 suant to this section, shall submit a written report to the president and
 40 the minority leader of the senate and to the speaker and the minority
 41 leader of the house of representatives.

42 Sec. 2. K.S.A. 9-1715 is hereby repealed.
 43

THIS POWER SHALL INCLUDE THE
 POWER TO AUTHORIZE ANY OR ALL
 KANSAS TRUST COMPANIES TO ENGAGE
 IN ANY TRUST RELATED ACTIVITY
 IN WHICH A ^{TRUST DEPT. OF A} NATIONAL BANK WITH
 TRUST POWERS COULD ENGAGE AT
 THE TIME AUTHORITY IS GRANTED.

Senate 4/41 1/18/95

Attachment 3

January 18, 1995

Additionally, until recently, the states have enjoyed nearly universal federal deference to state laws on branching. Historically, national banks could only branch to the same extent as state banks in their state because of the McFadden Act. This federal provision provided parity in branching similar to the parity provided by K.S.A. 9-1715 in all other areas of state vs. national bank competition. However, we now face enactment of the Riegle-Neal act and the many uncertainties it presents. In fact, Riegle-Neal contains language that expressly authorizes national banks to engage in some "branching activity," through agency agreements, absolutely without regard to state law. Fortunately, this new national bank branching authority does not become effective until September of 1995 so that we have the opportunity to seek parity from the legislature on this particular issue, which we intend to do. Also, while it has not yet occurred in Kansas, other states have seen the OCC interpret existing laws to allow them to simply ignore the state's law and the McFadden Act on issues of national bank branching. These represent clear examples of the federal government's move away from deference to state laws on matters relating to national bank branching.

Because subsection (d) was enacted at a time when the acceptability of any type branching was far less settled than it is today, it is obsolete in terms of its original purpose. Additionally, in light of the uncertainty presented by the federal government's steady move toward abolishing the states' rights to determine the type of branching which occurs within their borders, as evidenced by passage of the Riegle-Neal bill and the OCC's creative indifference to state law, keeping subsection (d) would remove a great deal of the statute's utility in light of its purpose, "parity."

The largest and swiftest changes facing the banking industry center on branching. There will be many debates on these issues and our office intends to continue to remain neutral on structure issues such as opt in/opt out. However, we are not neutral on the issue of maintaining the competitive equality that is so important to our current dual banking system. Luckily, time was on the side of Kansas state chartered banks with respect to the agency provisions of the Riegle-Neal Act. The Kansas legislature has the opportunity to explore the issue of "agency," and to provide the needed statutory parity, before this branching authority becomes effective for the national banks in Kansas. However, the timing of federal action may not always be so fortunate, and the uncertainty presented by Riegle-Neal and the federal government's continued move toward disregarding state laws and the McFadden Act, create a need for the commissioner to have the ability to react quickly to allow Kansas state banks the same authority as granted to national banks.

It is important to note that the proposed amendments continue to be based solely on the original purpose encompassed by the 1967 version of K.S.A. 9-1715; parity and competitive equality between state and national banks. The proposed language of Senate Bill 23, as did the original statute, only allows the commissioner to grant to state banks those powers possessed by the national banks. It does not authorize a special order that grants to state banks powers that exceed those of the national banks.

We would like to offer an amendment to Senate Bill 23 at this time. Mr. Carmen brought to my attention yesterday afternoon a concern that the current language would allow state trust companies to exercise the powers of a national bank. To alleviate that concern, we have removed "trust companies" from the first sentence of subsection (a) and added the language you see in the balloon. The balloon language allows the Commissioner to give trust companies parity on activities a national bank trust department could pursue.

We would respectfully request this legislation become effective upon publication in the Kansas Register.

Senate Bill 24 amends K.S.A. 74-3006 concerning state banking board meetings. This proposal adds language to specifically allow the board authority to meet in executive session to discuss confidential information. While the board already possesses this general authority under K.S.A. 75-4319, the addition of the proposed language to the banking board statute clarifies any questions or concerns that may be raised.

Senate 7141 1/18/95
Attachment 4

January 18, 1995

Senate Bill 25 amends K.S.A. 9-701 and K.S.A. 9-702. This proposal adds a definition of student bank to K.S.A. 9-701, found on page three, line four of the bill. The amendment to K.S.A. 9-702 exempts student banks from what is considered to be the "business of banking" and therefore from the provisions of the banking code.

Currently we have one high school bank that has been operating approximately 70 years. The bank is well run and has never been chartered, supervised or examined by our office. During my tenure in the OSBC I have received a handful of inquiries as to whether other schools could pursue such banking operations as part of a money and banking class. Currently we have one school in Olathe that has put their "student bank" on hold pending the outcome of this legislation. We have discussed this matter with the State Department of Education and they intend to implement policies to govern schools with "student banks" if this legislation is passed. We would request this legislation become effective upon the publication in the Kansas Register.

Senate 7/1/91 1/18/95
Attachment 5