

Approved: March 24, 1998  
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Don Steffes at 9:00 a.m. on March 17, 1998 in Room 529-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Newton Male, State Bank Commissioner  
Chuck Stones, Kansas Bankers Association  
Judy Stork, Office of State Bank Commissioner

Others attending: See attached list

**Continued hearing on Sub SB 574--Powers of state bank commissioner**

A copy of the letter from Chairman Steffes and Ranking Minority Member Feleciano to the editors regarding the privilege tax issue including information on Special Order or "wildcard" authority was given to the Committee (Attachment 1). Senators Steffes and Feleciano will be appearing before the House Tax Committee when **SB 541** is heard.

Copies of additional changes to the bill were presented regarding notice of issuance of Special Order when Legislature is in session and when they are not; and what should be included in the written report from the Bank Commissioner (Attachment 2). The Committee agreed that the inclusion of these provisions would be good public policy. Dr. Wolff described how other agencies must work through Rules and Regulations when such "special orders" are requested. After receiving comments and suggestions from the Legislature, the agency still maintains the right to implement the proposed rule or regulation.

Commissioner Male reiterated in his testimony the need for equality between the national chartered and state chartered banking systems for competitive reasons. He is very opposed to the amendment which would require notification to the Legislature as well as the preparation of an economic impact statement. The Office of the State Bank Commissioner has neither the personnel nor the expertise for the preparation of such a statement. He described the dual banking system as being "very fragile" and stated they cannot operate if state chartered banks perceive this as an attempt to rescind already implemented special orders. Most state banks would rather remain state banks because of lower fees but they must be allowed to be on a level playing field with national banks. He questioned whether Kansas customers would receive the same quality of service if banks were headquartered out of state rather than in Kansas. He reminded the Committee that the special order was passed by the former bank commissioner and he is only defending it.

Chuck Stones, Kansas Bankers Association, spoke in opposition to the proposed legislation stating that the banking industry is taking this "very personally" (Attachment 3). The passage of this bill would delay competitive equality by requiring additional reporting and the preparation of an economic impact study. If state banks perceive this as being an attempt to reduce their ability to compete with national banks, there will be an onslaught of state banks requesting to change their charters to national banks. He reminded the Committee that many state chartered banks remain open today that probably would have been closed if they had been subject to national authority in the 1980's. No other industry has the unique quality of being able to switch back and forth between the authority of national and state regulatory agencies.

Only three to five state chartered banks have voluntarily switched to national banks in the past five years according to Judy Stork, Office of State Bank Commissioner. (Note: Approximately three to five nationally chartered banks switched to state chartered status during the same time period). The rest of the state chartered banks which became national banks was due to mergers or acquisitions. Committee members said they were

## CONTINUATION SHEET

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on March 17, 1998.

not receiving the message from their constituent banks that this proposed legislation would be a problem for them. It was suggested that perhaps inflammatory material was being sent to banks within an organization in order to arouse animosity to the proposed request for supportive documentation for special order authority. From investigation, it appears that accounting firms were responsible for making banks aware of Sub S corporations dovetailing with subsidiaries in 1996.

Senator Biggs moved to report Sub SB 574 as favorable. Motion was seconded by Senator Becker. Motion carried.

The meeting was adjourned at 10:00 a.m. The next meeting is scheduled for March 18, 1998.



March 17, 1998

Letter to the Editor:

Since 1964 Kansas banks have paid a "Privilege Tax" which is equivalent to a corporate income tax. This procedure was developed cooperatively between the Kansas Legislature and the banking industry. Neither the rate of taxation nor the method of taxation was questioned by either the bankers or the legislature until several months ago when a very disturbing development was discovered.

In the fall of 1995, national accounting firms developed an accounting procedure which allowed nationally chartered Kansas banks to significantly reduce or eliminate their obligation to pay their Privilege Tax. About a month later, the Kansas Bank Commissioner, using his "Wild Card" authority gave state chartered banks this same opportunity. Two years later, in the fall of 1997, the Kansas Dept. of Revenue, in their review of tax receipts for the 1996 tax year, discovered a major decline in bank tax payments. The Revenue Dept. had projected receipts of \$38 million and actual collections were in the range of \$20 million. After a careful review and more knowledge of current developments, they projected collections of only \$10 million in 1999 from the banking industry in Kansas.

When this shortfall was discovered, it became immediately apparent

*Senate FLD*  
*Attachment 1*  
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that banks were forming investment subsidiary corporations, which were not subject to the Privilege Tax and leaving expenses in the banks, thus reducing or eliminating their state tax obligations. After much effort on our part, the number and names of the 45 national banks and 69 state banks utilizing this legal means of reducing or eliminating their tax liability were revealed. The number of banks using this accounting technique continues to grow but that number still represents only about one-third of all Kansas banks. However, in relation to bank earnings, most of the large banks are using this legal means of shifting their obligation to support state government to all the other taxpayers, including the funding of education and all other state programs.

Since Kansas is experiencing record tax receipts, the legislature is discussing massive tax cuts in addition to providing funds for many programs such as education and social services. It does not seem fair that a prominent sector of our economy can arbitrarily give themselves a huge tax break. The \$30 million which they will not pay this year, unless SB 541 passes, could well be used for significant additional tax relief for all homeowners and businesses. Of course, there are many who feel education has been short-changed and others who think that the reduction of sales tax on food for low-income families would be a good use of tax dollars. The needs are endless and there are many who were shocked to discover

that some banks granted themselves the greatest tax break of all.

The Kansas Senate recently passed SB 541 which would change the reporting requirement for both state and national banks and return their taxation rate to pre-1995 levels. SB 541 would not attempt to tax the millions of dollars of bank earnings which escaped taxation during the years of 1995, 1996 and 1997.

It is now up to the House of Representatives and the Governor to remove this unfair advantage provided to the banking industry. It is truly disappointing that in a period of unprecedented bank profitability, coupled with skyrocketing customer fees, along with the lessening of services in many banks, banks are now being rewarded with the reduction or elimination of their state income tax liability.

However, most Kansas banks are continuing to pay their taxes and should not be criticized . Also, it should be realized that those bank officers who are exercising this option, have a fiduciary responsibility to their stockholders to earn as much money as legally possible. Some banks are being unjustly criticized for something they did not do. Therefore, in the interest of full disclosure, a list of both state and national banks which have utilized this tax avoidance device is attached. If it is not published and you wish to know the course of action which your bank has taken, please contact the editor of the paper in which this letter appears.

They have received the list.

A campaign of disinformation is now being waged by the banking industry. The key element is to refer to the reinstatement of this tax back to the 1995 level as a "tax increase", a truly ridiculous claim and a good example of a half-truth which is very misleading. Also, the banking industry now wishes to study bank taxation in regard to rates and fairness. We feel it is better to conduct this study when they are paying taxes. Such a study would grant many banks another year of tax relief which amounts to a study costing other taxpayers about \$30 million in lost revenues.

Many bankers, but certainly not all, are now using their substantial influence over legislators, both through political contributions and as the community gatekeeper for loans, to affect legislation, thereby directly increasing their banks' profitability.

You, the bank customers and taxpaying Kansans, can change this unfair situation. Contact your Representative, Senator and the Governor urging them to plug this unfair tax loophole by supporting and voting for SB 541.

Senator Don Steffes, Chairman, Financial Institutions & Insurance Comm.

Senator Paul Feleciano, Ranking Minority Member

NATIONAL BANK INVESTMENT SUBSIDIARIES

Date of Notification to Department

1995

9-5	Wichita	Twin Lakes
9-5	Wichita	Southwest
9-27	Independence	Citizens
11-21	Hutchinson	First National
12-5	Kingman	Citizens

1996

1-22	Pratt	First
1-29	Clay Center	Peoples
2-13	Wichita	Bankers'
2-28	Derby	First
3-21	Wichita	INTRUST
4-22	Girard	Girard
4-22	Fort Scott	Citizens
5-6	Louisburg	First
5-6	Parsons	First
5-29	Chanute	Community
5-29	Salina	UMB
5-29	Independence	First
6-12	Leavenworth	Leavenworth
6-12	Leavenworth	First
6-12	Atchinson	Exchange
6-12	Salina	Sunflower
6-18	Osawatomie	First
6-24	Liberal	First
6-25	Beloit	First
7-16	Elkhart	First
8-19	Abilene	First
8-19	Hays	Emprise
10-7	Palco	First
11-6	Ottawa	Peoples
11-12	Great Bend	First
12-11	Washington	First
12-30	Marysville	Exchange

1997

1-6	Great Bend	Farmers
1-27	Osborne	Farmers
1-29	Burlington	Peoples
2-5	Quniter	First
2-27	Manhattan	Security
6-16	Scott City	First
7-8	Larned	First
7-21	Holcomb	First
7-21	Dighton	First
7-29	Olathe	First
8-22	Wellington	First
9-4	Stockton	Stockton

1997

9-12 Smith Center First



STATE BANK INVESTMENT SUBSIDIARIES

Date of Notification to Dept.

1995

10-11	Wichita	Emprise	11-29	Beloit	Guaranty
10-12	Junction City	1st State	12-5	Overland Park	Metcalf
10-13	Garden City	Fidelity	12-5	Parsons	Commercial
10-13	Oberlin	The Bank	12-6	Paola	Citizens
10-19	Norton	1st Security	12-15	Overland Park	Blue Valley
10-19	Olathe	Heritage	12-18	Topeka	Fidelity
11-14	Topeka	Commerce	12-19	Augusta	Prairie
11-21	Colwich	State Bank	12-28	Holton	Denison
11-27	Baxter Spgs.	American			

1996

1-3	Emporia	Lyon County	5-17	Overland Park	Mercantile
1-3	Hoisington	First Kansas	5-21	Clay Center	Union
1-3	Ottawa	Kansas State	5-31	Plainville	Plainville
1-3	Salina	First Bank	6-4	Manhattan	Kansas State
1-9	Johnson	Johnson State	6-12	Newton	First Bank
1-24	Fredonia	State Bank	6-18	Kansas City	First State
2-14	Eureka	Home Bank	7-3	Tonganoxie	First State
3-6	Wichita	Chisholm	7-9	Iola	Emprise
3-16	Macksville	Farmers & Mer.	8-27	Hugoton	Citizens
4-5	Larned	First State	8-29	Ellis	Ellis State
4-10	Lyndon	Lyndon State	10-15	Moundridge	Citizens
4-24	Iola	Iola Bank & Tr.	10-31	Hutchinson	Central
5-9	Altamont	Labette County	10-31	Pratt	Peoples
5-9	Holton	Kansas State	11-8	Emporia	Emporia State
5-9	Plains	Plains State	11-8	Leoti	First State
5-14	Dodge City	Fidelity	12-12	Council Grove	Farmers & Drovers
5-15	Sedgwick	Sedgwick State	12-19	Gardner	First Kansas

1997

1-6	Seneca	Citizens	9-11	McPherson	Home
2-28	Wichita	Garden Plain	9-29	Garnett	Kansas State
3-5	Atwood	Farmers	10-28	Tescott	Bank of Tescott
4-9	Lakin	Kearny County	11-19	Harper	Freeport
5-15	Kansas City	Industrial	11-19	Argonia	Farmers & Merchants
5-16	Kansas City	Security	11-19	Topeka	Kaw Valley
5-19	Mission	Mission Bank	11-21	Kansas	Brotherhood
5-19	Overland Park-Valley View		12-4	Sabetha	Farmers
6-13	Goodland	Bankwest	12-5	Bonner Springs	Commercial
8-12	Caldwell	Caldwell	12-8	Hill City	Consolidated
9-2	Hill City	Farmers & Mer.	12-17	Salina	Bennington
9-5	Wakeeney	Trego-Wakeeney	12-17	Topeka	Columbian
9-9	Kansas City	1st Community	12-19	Hiawatha	Citizens
9-11	LaCygne	Linn County	12-24	Riley	State Bank

1998

1-30	Ashland	Stockgrowers			
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A  
Substitute for SENATE BILL NO. 574

By Committee on Financial Institutions and Insurance

AN ACT concerning banks and trust companies; powers of bank commissioner; amending K.S.A. 1997 Supp. 9-1715 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1997 Supp. 9-1715 is hereby amended to read as follows: 9-1715. (a) The commissioner shall have the power to authorize any or all state banks to engage in any activity in which such banks could engage were they operating as national banks at the time such authority is granted, including but without limitation because of enumeration the power to do any act, and own, possess and carry as assets, property of such character including stocks, bonds or other debentures which, at the time authority is granted, is authorized under federal laws and regulations to be done by national banks notwithstanding any restriction elsewhere contained in the statutes of the state of Kansas. This power shall include the power to authorize any or all Kansas trust companies to engage in any trust related activity in which the trust department of a national bank with trust powers could engage at the time authority is granted. This power shall be in addition to any and all other powers granted to the commissioner.

(b) The commissioner shall exercise the power granted in subsection (a) by the issuance of a special order if the commissioner deems it reasonably required to preserve and protect the welfare of a particular institution, or if the commissioner deems it reasonably required to preserve the welfare of all state banks or trust companies and to promote competitive equality of state and national banks. Such special order shall provide for the effective date thereof and upon and after such date shall be in full force and effect until amended or revoked by the

*Senate File*  
*Attachment 2*  
*3/17/98*

commissioner. Promptly following issuance, the commissioner shall cause a copy of each special order to be mailed to all state banks and trust companies.

(c) When the legislature is in session, within one week after the state bank commissioner issues any special order under this section, the commissioner shall appear before the senate standing committee on financial institutions and insurance and the house of representative's standing committee on financial institutions. At such meeting the commissioner shall distribute copies of the special order, together with copies of the economic impact statement applicable thereto. The economic impact statement shall include: A description of the cost or benefit, the persons who will bear the costs or receive the benefit and those who will be affected by the special order, including the agency issuing the special order, other governmental agencies or units, private citizens and consumers of the products or services which are the subject of the special order or enforcement thereof. The required statement shall be made by the commissioner, who may receive assistance therefor from the division of the budget and all state agencies from whom information is requested.

~~(e)~~ (d) The commissioner, at the time of issuing any special order pursuant to this section, shall submit a written report, including copies of such special order and the economic impact statement required by subsection (c), to the president and the minority leader of the senate and the chairperson and ranking minority member of the senate standing committee on financial institutions and insurance, and to the speaker and the minority leader of the house of representatives and the chairperson and ranking minority member of the house of representatives standing committee on financial institutions. If requested by the chairperson of one or both of such committees, the commissioner shall appear before such committee or committees to respond to questions members of such committee or committees may have, and to provide copies of such written report to members of such

committee or committees.

{d} (e) The issuance of special orders under this section shall not be subject to the provisions of article 4 of chapter 77 of the Kansas Statutes Annotated.

Sec. 2. K.S.A. 1997 Supp. 9-1715 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

# Kansas Bankers Association

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3-17-98

TO: Senate Financial Institutions and Insurance Committee  
FROM: Chuck Stones

Final Thoughts on "Sub for SB 574"

- 1) IMPLICATIONS
  - a) Potential delay in competitive equality
- 2) THIS WOULD AFFECT STATE BANKS ONLY
- 3) THIS SENDS A MESSAGE TO STATE BANKS

*Senate FID*  
*Attachment 3*  
*3/17/98*