Approved: March 11, 1993
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE.

The meeting was called to order by Chairperson Richard Bond at 9:10 a.m. on March 10, 1993 in Room 529-S of the Capitol.

All members were present.

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

Conferees appearing before the committee:
Kevin Glendening, Assistant Deputy Bank Commissioner
James Maag, Kansas Bankers Association
Pete McGill, Community Bankers Association
Gail Kasson, Assistant Deputy Administrator, Department of Credit Unions
Jerel Wright, Kansas Credit Union Association

Others attending: See attached list

Senator Moran moved to approve the minutes of the meeting of March 9, 1993 as submitted. The motion was seconded by Senator Steffes. The motion carried.

The hearing was opened on **HB 2077**. Kevin Glendening, Assistant Deputy Bank Commissioner, appeared before the committee to testify in favor of this legislation. (Attachment #1.) Mr. Glendening explained that this bill would amend KSA 9-1117 to permit one exception to the existing requirement that individuals who serve as directors of a state bank own "qualifying shares." In response to Senator Steffes' question, Mr. Glendening explained that the bill was prompted by one specific case but the Bank Commissioner's office feels this legislation could be a positive factor in providing continuity during the transition period where a bank is either sold or placed in receivership.

James Maag, Kansas Bankers Association, appeared to testify as a proponent of this legislation and to request two amendments to the bill. (Attachment #2.) The first amendment would add, in Section 1 (a) line 20, the language, "...in the parent company *that controls, directly or indirectly* such bank..." Dr. Wolff, Research Department, questioned whether the word "parent" was appropriate or necessary. Following discussion, the language was found to be acceptable. The second amendment proposed would strike the language referring to the community reinvestment act in KSA 9-523 and replace with, "*the state.*" Senator Steffes explained why the language was originally developed and why the community reinvestment act restrictions are no longer effective.

Pete McGill, Community Bankers Association, testified that his organization supports this legislation.

There were no further questions and no other conferees; the hearing was closed. Senator Praeger moved to amend the bill as proposed by Mr. Maag. Senator Steffes seconded the motion. The motion carried.

Senator Lee made a motion, seconded by Senator Lawrence to move the bill favorably as amended. The motion carried. Senator Steffes will carry the bill.

The hearing was opened on **HB 2431.** Gail Kasson, Assistant Deputy Administrator, Department of Credit Unions, testified as a proponent of this legislation, stating that the bill would amend three statutes. (Attachment #3.) At Senator Bond's request, Mr. Kasson clarified who would be entitled to receive confidential information secured in the process of examining credit unions.

Jerel Wright, Kansas Credit Union Association, stated that his organization supports the changes.

There being no further questions or conferees, the hearing was closed. Senator Praeger made a motion to move the bill favorably and to place it on the Consent Calendar. The motion was seconded by Senator Lawrence. The motion carried.

The committee adjourned at 9:40 a.m.

The next meeting is scheduled for Thursday, March 11, 1993.

GUEST LIST

SENATE

COMMITTEE: FINANCIAL INSTITUTIONS AND INSURANCE DATE: 3/10/93

NAME	ADDRESS	ORGANIZATION
Gail Kasson	3016 Sagebrush	Ks. St. Dept. of CU's
Joe Newberry	306 GRAND	KSDCU
Kathy Lovelace	8605 SW Barrington Ct - Ste 100 Topeka, Ks.	Comm. Bankers Assn. of Ks
Pete McGill	Topeka Ks	McGill & Assoc.
Jim Mazs	"	KBA
Judi Stork	✓	State of KS Banking Dept
Frank Dunnick	✓	✓
Kevin Glendening	✓	✓
Roger Fromdo	✓	KS Gov. Consulting

STATE OF KANSAS

Frank D. Dunnick
Bank Commissioner

Judi M. Stork
Deputy Commissioner

Kevin C. Glendening
Assistant Deputy Commissioner

Ruth E. Glover
Administrative Officer

OFFICE OF

BANKING DEPARTMENT

TOPEKA

TESTIMONY BEFORE THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

Good morning Mr. Chairman, members of the committee. House Bill 2077 would amend K.S.A. 9-1117 to permit one exception to the existing requirement that individuals who serve as directors of a state bank own "qualifying shares".

In certain problem bank situations, the bank's capital may deteriorate to a point where its capital stock account is considered "impaired". Under K.S.A. 9-906, the stockholders of that institution must be assessed in an effort to raise additional capital to cure the impairment. Those stockholders who do not pay their portion of the assessment forfeit their ownership of the stock.

The exception contained in HB 2077 would be that, if in an impairment situation as I described, a director, who in the Bank Commissioner's opinion did not cause or contribute to the bank's problem condition, fails to pay their stock assessment and thereby loses their "qualifying shares", that person may continue to serve as a director, until such time as the impairment is resolved, provided they received the prior approval of the Bank Commissioner.

The Banking Department believes this exception could be a positive factor in providing some continuity during the transition period where either the bank is sold or placed in receivership.

700 JACKSON, SUITE 300, TOPEKA, KANSAS 66603-3714 (913) 296-2266 FAX (913) 296-0168

Senate FI&I
3-10-93
Attachment #1

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

March 10, 1993

TO: Senate Committee on Financial Institutions and Insurance
RE: **HB 2077** - Qualifications for bank directors

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **HB 2077**. We are in full support of the Bank Commissioner's requested amendment to K.S.A. 9-1117 and we would like to present to the committee an additional amendment to that statute and also an amendment to K.S.A. 9-523.

The amendment to K.S.A. 9-1117 would insert in Section 1 of the bill, on line 20, language which clarifies that bank directors can hold "second tier" stock as qualifying shares for their bank directorship. I have attached to this testimony a letter from the President of Overland Park State Bank outlining the problem which their directors have encountered as the result of the purchase of their bank by an out-of-state holding company. We do not believe it was the intent of our interstate banking law to create situations where existing bank directors would have to step down if the bank is sold to an out-of-state holding company. We would, therefore, request that the committee amend **HB 2077** to include the proposed language to Section 1.

The second amendment would amend K.S.A. 9-523 to remove the requirement that a majority of the directors of a subsidiary bank of a holding company must live within the defined Community Reinvestment Act (CRA) area of the bank. Changes in both state law and federal regulation have created problems for many Kansas banks and made compliance with this law very difficult.

The provision for having a majority of directors within the CRA area was first imposed in 1985 as part of the multi-bank holding company act. Until 1991 that provision applied only to the boards of subsidiary banks of multi-bank holding companies. In the 1991 interstate banking act the definition of what constitutes a "bank holding company" was changed and thus all subsidiary banks of any holding company, whether multi-bank or one-bank, became subject to the provisions of K.S.A. 9-523. Nearly 450 Kansas banks are subsidiaries of either a one-bank or multi-bank holding company.

Other factors which have added to the problem are the fact that the original language was implemented prior to the time branch banking was allowed in Kansas and prior to the time when federal regulators started mandating to banks the size of their CRA areas. In many instances, the regulators are telling banks they must shrink their CRA area or alter its boundaries to serve a particular area. As a result, some directors now find themselves outside the redefined CRA area of their bank.

Senate FI&I

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
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3-10-93
Attachment #2

Those banks which have established branch operations in other communities are less likely to have problems than the bank which has remained within the boundaries of the town or city where the main bank is located. Those with out-of-town branch operations can count any director living in those branch communities as being within the CRA area of the bank whereas the bank with no out-of-town branches must continue to draw a majority of their directors from within a much narrower CRA area.

In addition, a bank which is not a subsidiary bank of a holding company must only comply with the provisions of K.S.A 9-1114 which requires that a majority of a bank's directors must be residents of the state of Kansas (see attached). Thus it is possible for Bank A, which is not part of a holding company, to have a board where no members of the board are from the local area, but are scattered throughout the state while Bank B, which happens to be the subsidiary of a one-bank or multi-bank holding company, and is serving the same type of community as Bank A, must have a majority of its directors from within its CRA area.

There is also the possibility that a multi-bank holding company which has a subsidiary bank where they do not have a majority of their directors from within the CRA area may decide to convert that bank to a branch of another bank in order to attain compliance with Kansas law. That obviously defeats the very purpose for which the law was originally intended, but as stated earlier, K.S.A. 9-523 was enacted prior to the authorization for branching, interstate banking, and the increased federal regulatory emphasis on CRA area size and thus many of these problems could not have been anticipated.

As a result of these problems, we are suggesting an amendment to K.S.A. 9-523 which would strike the requirement that a majority of directors must be from within the CRA area of the bank and simply require that they must be residents of Kansas - the same requirements as set forth in K.S.A. 9-1114. We do not offer this amendment as the only possible solution to this problem, but more as a starting point for discussion and, hopefully, resolution of the problem.

Your consideration of these key issues is very much appreciated.

James S. Maag
Senior Vice President

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March 5, 1993

Senator Richard Bond
State House
Room 128-S
Topeka, Kansas 66612

Dear Dick:

On Wednesday, March 10, the Financial Institutions and Insurance Committee which you Chair will be holding hearings on House Bill 2077. I understand, there will be an amendment offered that will allow second tier stock ownership as qualifying shares for Directorship in Kansas banks.

Now that Interstate Banking is with us, stock ownership for qualifying shares presents a problem. Most banks in Kansas are owned by one bank holding companies or multi-bank holding companies. Under KSA9-1117 owning shares in either the bank or holding company is required for qualifying shares for a director.

The purchase of Kansas bank holding companies, which own Kansas banks, by other bank holding companies that require an exchange of common stock results in unqualified stock ownership for directors of the acquired holding company or bank. Second tier stock is not recognized as qualifying shares under KSA9-1117.

I do not believe that Kansas Interstate Banking law intended that existing directors be replaced; but, intended to preserve existing directorships.

It is apparent that because the Interstate Banking Law is silent on this matter that this was an oversight in drafting the law. In an effort to preserve our local directorships I solicit your support in passing HB2077, and the amendment to same, which will allow second tier stock ownership to be recognized as qualifying stock ownership in Kansas banks.

Thank you for your support.

Sincerely,

Donald C. See
President

DCS:GB

Copy: Mr. Jim Maag, KBA
Mr. Marshall Hendrickson

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As Amended by House Committee

Session of 1993

HOUSE BILL No. 2077

By Committee on Financial Institutions and Insurance

1-20

AN ACT relating to banks and banking; concerning qualifications of president and directors; amending K.S.A. 9-1117 and repealing the existing section.

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

Section 1. K.S.A. 9-1117 is hereby amended to read as follows: 9-1117. *(a)* No person shall be a member of the board of directors or a president within the meaning of K.S.A. 9-1114 and 9-1115, and amendments thereto, of any bank or trust company unless such person is the owner of record of common stock having a par value of not less than $500 in such bank or trust company or in the parent corporation of such bank or trust company. Such stock may be transferred to and held in a trust if such trust is revocable by the member or president owning such stock, but the stock shall not be pledged, hypothecated or assigned in any other way.

that controls, directly or indirectly,

(b) Any director who fails to maintain such director's qualifying status, as a result of such director's failure to meet an assessment required by K.S.A. ~~9-907~~ 9-906, and amendments thereto, may continue to serve in such person's capacity as a director, with the prior approval of the state bank commissioner, but only until the capital impairment of such bank or trust company has been resolved or such bank or trust company has been declared insolvent.

Sec. 2. K.S.A. 9-1117 is hereby repealed.

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

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9-523. Same; board of directors of each bank. Except for banks whose voting shares are acquired by a bank holding company pursuant to subsection (b) of K.S.A. 9-520, and amendments thereto, a majority of the board of directors of each bank domiciled in this state which is a subsidiary of a bank holding company shall be residents of ~~the local community of the bank as specified in its community reinvestment act statement required under the federal community reinvestment act of 1977, 12 U.S.C. 2901, *et seq*~~ this state.

History: L. 1985, ch. 55, § 6; L. 1991, ch. 45, § 2; July 1.

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bank's parent company or a subsidiary of the bank's parent company except as provided in subsection (d).

(d) A bank may hold or sell any property coming into its ownership in the collection of debts. All such property except legal investments, shall be sold within six months of acquisition, provided a commercially reasonable sale can occur.

(e) If a commercially reasonable sale cannot occur within six months, the bank shall not carry such property as a book asset except that the commissioner may authorize a bank to carry such property as a book asset for a longer period.

History: L. 1947, ch. 102, § 41; L. 1975, ch. 44, § 18; L. 1981, ch. 52, § 1; L. 1985, ch. 56, § 3; L. 1988, ch. 61, § 3; L. 1990, ch. 59, § 1; July 1.

Source or prior law:
9-111.

CASE ANNOTATIONS

1. Ordinarily bank cannot acquire its own stock; exceptions. Wentworth v. Russell State Bank, 167 K. 246, 254, 205 P.2d 972.

2. Banks prohibited from using assets on speculative securities; surety bonds required to cover dishonest employees. Shearson/American Exp. v. First Continental Bank, 579 F.Supp. 1305, 1311 (D.C. Mo. 1984).

9-1113. Unlawful preferences. No bank shall give any preference to any depositor either by pledging any of its assets as collateral security or in any other manner, except as provided under the provisions of K.S.A. 9-1603, and amendments thereto, and the deposit of public moneys and funds in the custody of the federal court or any of its officers may be secured as elsewhere provided in this act or as required by the federal court.

History: L. 1947, ch. 102, § 42; L. 1981, ch. 53, § 1; L. 1989, ch. 48, § 26; July 1.

Source or prior law:
9-142.

Research and Practice Aids:
Banks and Banking ⇐ 80(5).
Hatcher's Digest, Banks § 65.
C.J.S. Banks and Banking § 530 et seq.
Am.Jur.2d Banks §§ 758 to 762.

9-1114. Board of directors of bank or trust company; number; qualifications; election; increase, when; vacancies; forfeiture of office; annual meeting. The business of any bank or trust company shall be managed and controlled by its board of directors and this shall include the authority to provide for bonus payments, in addition to ordinary compensation for any or all of its officers and employees. The board shall consist of not less than five nor more than 25 members, all of whom shall be stockholders of the bank or trust company or of the parent corporation of the bank or trust company, and who shall be elected by the stockholders at any regular annual meeting which shall be held during the first 120 days of each calendar year. If the number of directors elected is less than 25, the number of directors may be increased so long as the total number does not exceed 25 and when the number is increased the first additional directors may be elected at a special meeting of the stockholders. The directors shall be elected in the manner provided in the general corporation code. Vacancies in the board of directors may be filled in the manner provided in the general corporation code. A majority of the directors shall be residents of this state. Any director of any bank or trust company who shall become indebted to such bank or trust company on any judgment or charged off indebtedness shall forfeit such person's position as director and such vacancy shall be filled as provided by law.

History: L. 1947, ch. 102, § 43; L. 1957, ch. 73, § 1; L. 1959, ch. 59, § 1; L. 1975, ch. 44, § 19; L. 1976, ch. 57, § 1; L. 1983, ch. 46, § 3; L. 1989, ch. 48, § 27; July 1.

Source or prior law:
9-109.

Research and Practice Aids:
Banks and Banking ⇐ 51.
C.J.S. Banks and Banking § 110 et seq.
Am.Jur.2d Banks § 77 et seq.

Law Review and Bar Journal References:
Methods to control the closely held Kansas corporation, James K. Logan, 7 K.L.R. 405, 407 (1959).

CASE ANNOTATIONS

1. Duty of bank to transfer stock; refusal; mandamus proper remedy. Wentworth v. Russell State Bank, 167 K. 246, 252, 205 P.2d 972.

2. Discretion of directors not interfered with by courts in absence of fraud, etc. Cron v. Tanner, 171 K. 57, 61, 63, 229 P.2d 1008.

9-1115. Officers of bank or trust company; election; term; bond; forfeiture of office. The board of directors may elect a chairperson and shall elect a president from its members and shall elect one or more vice-presidents, a secretary and a cashier. The office of president and cashier shall not be filled by the same person. Such officers shall hold their offices for a term of not to exceed one year and until their successors are elected and qualified. The board of directors shall require all officers and employees having the care or handling of the

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TESTIMONY ON H B 2431

STATUTES RELATING TO CREDIT UNIONS

Presented to the

SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

Senator Richard Bond, Chairman

March 10, 1993

Mr. Chairman, Members of the Committee:

I am Gail Kasson, Assistant Deputy Administrator of the Kansas State Department of Credit Unions. Our agency is responsibile for regulating 139 state chartered credit unions in the state of Kansas. My purpose today is to provide you with information about our bill which contains three statutes that have been revised as follows:

KSA 17-2219, which deals with expulsion of credit union members, has been re-written to improve clarity and remove areas of ambiguity from the existing statute.

KSA 17-2227, which deals with the handling of confidential information secured in the process of examining credit unions, has been entirely re-written. This was done primarily for three reasons, (1) to make it clear that all information obtained in the examination process is considered confidential, (2) to document that this information is the property of the state, and (3) clarify to whom confidential information may be provided and under what circumstances. The re-written statute as presented is very similar to the confidentiality statute banking presently uses.

KSA 17-2232, which deals with the credit union council is being amended to provide a technical correction clarifying who may submit individuals as candidates for council positions. When this statute was submitted last year, it was changed to restrict the submission of names of potential council members to only state chartered credit unions since the previous statute did not adress this situation. The way the previous statute was written, it was possible that all candidates submitted could be from federally chartered credit unions over which our department has no regulatory authority. However, in making this change, we inadvertenly restricted the list of candidates to only state chartered credit unions, which did not allow submission of names for the at large positions on the council.

I would like to respectfully ask the committee's support for this bill.

Senate FI
3-10-93
Attachment #3