

FILE
Subject Banking
Transactions
Copy to _____



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

June 12, 1974

Opinion No. 74- 196

Carl O'Leary
State Bank Commissioner
K.P.L. Towers
Topeka, Kansas 66603

Dear Commissioner O'Leary:

You inquire as to the statutory authority of Kansas banks to establish and operate an electronic funds transfer system (EFTS).

Under such a system, a bank, or group of banks acting jointly, may install electronic computer terminals at various locations, placed generally as so-called "point of sale" terminals in retail sales or service establishments. The terminal may be a completely automated installation, or one designed for use by the personnel of the establishment in which it is located. These terminals would be "on line" to the computer of the bank or participating banks. The bank or participating banks would furnish each of their depositors with a coded card designed to identify the depositor and account when inserted in the terminal. By inserting the card and the terms of the transaction into the terminal which transmits the information identifying the depositor, the account, and the transaction to the computer on the premises of the bank, a depositor would thus be able to deposit or withdraw cash from his checking or savings account, or transfer funds from his own account to that of another depositor of the bank or of one of the participating banks, including the account of the retail establishment in which the terminal is located. A depositor who by prearrangement has established a line of credit with his bank may by use of his card at the terminal activate this line of credit, usually by overdrafting his deposit checking account. All transactions would be consummated instantly in the computer on the premises of the bank, which would either accept the transaction or reject it if the depositor did not have either a sufficient balance or an established line of credit.

Carl O'Leary
June 12, 1974
Page Two

The question you pose, as stated above, is whether the use of such a system is within the statutory authority of Kansas banks. K.S.A. 9-1111 states in part thus:

"The general business of every bank shall be transacted at the place of business specified in its certificate of authority, and it shall be unlawful for any bank to establish and operate any branch bank, or branch office or agency or place of business except as hereinafter provided"

Certain banking services, described as "auxiliary teller services," may be performed at detached auxiliary banking services facilities. These services are limited to

"rental of safe deposit boxes, receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, and receiving payments payable at the bank"

The question presented is whether through a depositor's use of an EFTS terminal placed at various locations off the premises of a bank or its duly authorized auxiliary banking facilities, a bank is enabled to engage in the business of banking at locations other than those authorized by law. The question of banking at an unauthorized location commonly turns upon whether an agency relationship exists between the bank and those persons alleged to be acting in its behalf at off-premise locations. Terminal installations may vary between those which are completely automated for use by the depositor unaided, and those which are operated by an employee of the retail commercial or mercantile establishment in which the terminal is located. For illustrative purposes, the latter kind may be more usefully discussed here.

A depositor who presents himself to a terminal operator who is an employee of, e.g., a grocery supermarket, furnishes the employee with his coded card, and instructs the employee that he wishes to complete one or another transaction with his bank, the computer of which is "on line" to the terminal in the supermarket. The transaction may be a withdrawal, in which case the terminal operator inserts the card, which identifies the depositor and account, together with other information pertinent to the transaction, into the terminal, which information is transmitted to the bank computer. If there exists a sufficient balance or prearranged line of credit permitting an overdraft in the amount of the withdrawal on the depositor's checking account, the computer will debit the account of the depositor, and credit the account of the supermarket with the amount of the withdrawal, and notify the terminal operator that the transaction has been completed. The terminal

Carl O'Leary
June 12, 1974
Page Three

operator will then pay to the depositor from supermarket funds an amount equal to the amount of the withdrawal or loan. In such a transaction, the terminal operator acts in his capacity as supermarket employee, and not under the direction or control of the bank. His function is most analogous to that of a postman or telegraph operator, a transmitter of information. In this instance, when he has introduced the appropriate information into the computer through the terminal, and the computer has advised him that the transaction is complete, he acts once again in the capacity of a supermarket employee in paying over to the depositor from funds of the supermarket, not of the bank, the amount of the withdrawal.

A deposit, as well as a withdrawal, may be made through the use of this system. A depositor may instruct the terminal operator that he wishes to make a deposit, and pay over to the operator the amount of the deposit in cash. At this point, the deposit has not yet been perfected, and the cash so paid over to the operator is in neither the actual nor constructive possession of the bank. At this instant, the supermarket is the debtor of the depositor. The operator who accepts the sum must introduce the appropriate information into the computer through the terminal, which then credits the appropriate account, and debits the account of the supermarket by that amount. The deposit cannot be perfected on the premises of the supermarket, but only by transmission of the data to the bank computer, and action by the computer to register that information and effect the transaction on the records of the bank. Indeed, the deposit is perfected only by a transfer of funds from the account of the supermarket to the account of the depositor, a task which only the computer is able to accomplish. The terminal operator is able only to transmit the necessary information and instruction on behalf of the depositor to the computer, which must then effect and perfect the transaction.

The relationship between a bank and a general depositor is "that of debtor and creditor." Epley v. Citizens State Bank of Mullinville, 104 Kan. 489 (1919). The relationship arises as to a given deposit only upon delivery thereof by the depositor to the bank. In the case of a deposit initiated through a computer terminal, the account of the depositor can be credited by the amount thereof only when the computer has electronically been instructed to and has in fact registered and recorded the transfer to the account of the depositor.

To those versed in computer technology, the foregoing discussion may seem unduly rudimentary. It is necessary, however, to clarify the detailed nature of the system as we understand it and upon which our conclusions are based herein.

Carl O'Leary
June 12, 1974
Page Four

It is our view that when fund transfers are effected by a bank computer pursuant to instructions received from terminals located neither on the premises of the bank or of detached auxiliary banking service facilities, the business of banking is not transacted at such terminal locations, but on the premises of the bank wherein the transactions are electronically effected and perfected. Accordingly, based upon the foregoing, it is our view that the use of electronic fund transfer systems is not prohibited by K.S.A. 9-1111, and that such systems, when utilized to facilitate transactions in the general nature of those described above, do not involve the transaction of the business of banking at unauthorized locations.

We have not attempted to anticipate and describe in detail the variety of transactions within the capability of such systems. It is hoped that the foregoing discussion will be sufficient to answer the questions posed in your letter. If, however, further questions remain, please feel free to contact us.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm