



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
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March 15, 1978

ATTORNEY GENERAL OPINION NO. 78-115

Mr. Payne H. Ratner, Jr.
Attorney for Bank Commissioner
and State Banking Board
403 Columbian Title Building
820 Quincy Street
Topeka, Kansas 66612

Re: Banks--Detached Facilities--Loan Production Offices

Synopsis: The State Bank Commissioner has no power under K.S.A. 9-1715 to authorize a state bank to establish a loan production office on the premises of a detached facility.

* * *

Dear Mr. Ratner:

In Opinion No. 78-109, we concluded that the operation of a loan office in this state by a national bank at a place other than its main office or an attached or detached facility did not constitute branch banking in violation of K.S.A. 9-1111. You inquire, in light of that opinion, whether the State Bank Commissioner may authorize state banks to operate loan production offices at detached facilities which are authorized by K.S.A. 9-1111. Under that statute, a state bank may offer "auxiliary teller services" at detached facilities,

"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"

Mr. Payne H. Ratner, Jr.
Page Two
March 15, 1978

This section was first enacted in 1967. Ch. 74, L. 1967. As first enacted, it stated thus:

"In addition to any and all other powers heretofore granted to the state bank commissioner, the commissioner shall have the power to authorize any state bank or trust company to engage in any banking activity in which such bank or trust company could engage were they operating as a national bank 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 said authority is granted, are authorized under federal laws and regulations for transactions by national banks notwithstanding any restrictions elsewhere contained in the statutes of the state of Kansas. Upon receipt of a written request from any state bank or trust company, the commissioner shall exercise such power by the issuance of a special order therefore if he deems it reasonably required to preserve and protect the welfare of such an institution and promote the general economy of this state."

In 1974, the section was amended. Ch. 36, § 44, L. 1974. The second paragraph was added, authorizing the commissioner to enlarge the authority of state banks on a similar basis, but by blanket order applicable to all state banks, in addition to the existing authority to do so on a bank-by-bank basis. In addition, the third paragraph of the existing section was added, imposing a limitation on the authority thus:

"The commissioner shall not have power under this section to authorize any state bank or trust company to establish or operate any branch bank, or branch office or agency or place of business, or to offer services thereat."

K.S.A. 9-1111 commences thus:

Mr. Payne H. Ratner, Jr.

Page Three

March 15, 1978

"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"

The Commissioner may not, in the exercise of the administrative authority vested in that office under K.S.A. 9-1715, authorize a state bank to transact business at any location other than those locations enumerated in K.S.A. 9-1111. Thus, the legislature retained control of the extent to which state banks could establish places of business at locations other than their main banking premises, and did not delegate to the Commissioner any power to authorize additional locations.

The question presented is whether, the legislature having specifically authorized state banks to transact certain business at certain locations in addition to the main banking premises, the commissioner may authorize under this section state banks to transact certain additional business at those expressly authorized locations, in addition to that business expressly authorized by statute. The Commissioner may not authorize any state bank to "establish or operate any branch bank, or branch office or agency or place of business, or to offer services thereat." The prohibition is stated in the disjunctive. He may not authorize the establishment of any branch bank, branch officer, agency or other place of business other than that expressly authorized by K.S.A. 9-1111. Nor may he authorize any state bank to offer services at any branch bank, branch office, agency or place of business other than the main banking office other than that business which is specifically authorized by law. If the prohibition is construed conjunctively, the second clause is merely redundant, for it would only prohibit the Commissioner from permitting a state bank to offer services at a branch bank or office, agency or other place of business which he is forbidden to authorize the state bank to establish in the first instance.

Thus, I can but conclude that a state bank may offer at a detached facility only those services which are specifically authorized by K.S.A. 9-1111, and that the Commissioner may not authorize a state bank to establish a loan production office on the premises of a detached facility.

Yours truly,



CURT T. SCHNEIDER
Attorney General