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ATTORNEY GENERAL

TOPEKA, KANSAS 66612

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ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79- 193

Mr. Roy P. Britton
Bank Commissioner
Kansas Banking Department
818 Kansas Avenue
Topeka, Kansas 66603

Re: Banks--Bank Holding Companies--Restrictions
and Limitations

Synopsis: K.S.A. 9-504 through 9-505c place specific restrictions and limitations on bank holding companies. A bank holding company is prohibited from acquiring ownership or control of any voting shares of any company which is not a bank and from engaging in non-banking business, i.e., any business other than that of banking or of managing or controlling banks or of furnishing services to or performing services for any bank of which it owns or controls 25% or more of the voting shares. Such statutory prohibitions preclude a bank holding company from establishing a subsidiary to engage in mortgage leasing and finance company activities.

* * *

Dear Mr. Britton:

You request our opinion as to whether a proposed mortgage, leasing and finance company subsidiary of a bank holding company would violate Kansas banking statutes. More specifically, you inquire whether the proposed subsidiary may 1) lease office space from a subsidiary state bank; 2) generate loans for the subsidiary state bank; 3) sell and assign these loans to the subsidiary state bank.

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K.S.A. 9-504 through K.S.A. 9-505c relate to bank holding companies. The terms "bank holding company" and "subsidiary" are defined by K.S.A. 9-504, while the substantive provisions pertinent to your inquiry are found in K.S.A. 9-505b, which states:

"(a) Except as otherwise provided in this act, no bank holding company, as defined by K.S.A. 9-504, shall: (1) After the date of enactment of this act acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or (2) after two (2) years from the date of enactment of this act or from the date as of which it becomes a bank holding company, whichever is later, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any business other than that of banking or of managing or controlling banks or of furnishing services to or performing services for any bank of which it owns or controls twenty-five percent (25%) or more of the voting shares."

K.S.A. 9-505b contains a prohibition against bank holding companies engaged in non-bank activities. It provides that a bank holding company shall not acquire ownership or control of any voting shares of a company which is not a bank, and those bank holding companies having shares in a non-banking company at the time the law was enacted were allowed a period of time to divest themselves of the interest. The only activities of a bank holding company expressly authorized by K.S.A. 9-505b are those of banking, managing or controlling banks and furnishing or performing services for a bank of which it owns or controls at least 25% of the voting shares.

The federal Bank Holding Company Act, 12 U.S.C. §1841, et seq. is somewhat analogous to the state statutes. 12 U.S.C. §1843 provides in part:

"(a) Except as otherwise provided in this chapter, no bank holding company shall--
(1) after May 9, 1956, acquire direct or indirect ownership or control of any voting shares of any company which is not a bank, or

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(2) after two years from the date as of which it becomes a bank holding company, . . . or, in the case of any company which becomes, as a result of the enactment of the Bank Holding Company Act Amendments of 1970, a bank holding company on the date of such enactment, after December 31, 1980, retain direct or indirect ownership or control of any voting shares of any company which is not a bank or bank holding company or engage in any activities other than (A) those of banking or of managing or controlling banks and other subsidiaries authorized under this chapter or of furnishing services to or performing services for its subsidiaries, and (B) those permitted under paragraph (8) of subsection (c) of this subject to all the conditions specified in such paragraph or in any order or regulation issued by the Board under such paragraph"
(Emphasis added.)

As evidenced by the emphasized portion of the foregoing federal statute, there is a material difference between that statute and K.S.A. 9-505b. While both statutes prohibit a bank holding company from conducting non-banking activities, the federal act expressly permits a bank holding company to engage in those non-banking activities specified in subsection (c)(8) of 12 U.S.C. §1843. Subsection (c)(8) lists 12 particular activities which, although technically non-banking, 1) are closely related to banking, 2) are proper incidents to banking or managing or controlling banks, and 3) can reasonably be expected to produce benefits to the public that outweigh possible adverse effects.

The Kansas statute does not have a provision similar to subsection (c)(8) of 12 U.S.C. §1843. Even though the federal law contemplates and expressly authorizes national bank holding companies to engage in closely-related non-banking activities, the state statute has no comparable provision. Although there is little Kansas case law discussing banks' powers, the few available cases state unequivocally the general proposition that the statutory designations of the kinds of business in which banks can engage are grants of authority, and constitute their express powers; banks have implied authority to do all things necessary or proper, incidental to these statutory grants of authority, and these constitute their implied powers; but banks have no

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authority to transact business not expressly granted by statute, or implied therefrom. First State Bank v. Bone, 122 Kan. 493, 503 (1927). See, also, 4 Michie, Banks and Banking, Chapter 7 §§1, 5 (1971). We have no difficulty in finding these principles equally applicable to bank holding companies, as well. Thus, it is apparent that the federal law imposes limitations on conduct of non-banking activities of bank holding companies, whereas Kansas law imposes an outright prohibition against such non-banking activities.

Based on the foregoing, we have concluded that a bank holding company organized and existing under state statutes is expressly prohibited from acquiring ownership or control of any voting shares of any company which is not a bank and from engaging in businesses other than banking or managing or controlling banks, or of furnishing services to or performing services for banks. As a result, it is our opinion that the proposed mortgage, leasing and finance company is proscribed, since the proposed activities of such company are non-banking in character. Having determined that the establishment of such subsidiary is not statutorily authorized, we find it unnecessary to consider the propriety of each of the activities proposed for such subsidiary.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Linda P. Jeffrey
Assistant Attorney General

RTS:ALR:LPJ:gk