



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 13, 1979

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

ATTORNEY GENERAL OPINION NO. 79-294

Mr. Roy P. Britton
State Bank Commissioner
Suite 600, 818 Kansas Avenue
Topeka, Kansas

Re: Banks and Banking--Powers--Remote Service Unit

Synopsis: A microfiche reader which is not activated by a machine-readable instrument in a bank customer's possession and control, and which must be operated by an employee or agent of the bank, is not a constituent part of an electronic information processing device contemplated by K.S.A. 1978 Supp. 9-1111, and is not authorized by law to be used in connection with a bank's remote service unit.

* * *

Dear Mr. Britton:

Your predecessor wrote to this office with a question concerning the legality of a bank using a microfiche reader in one of its remote service facilities. The system in use at the service facility in Oakley, Kansas, is an off-line automatic teller maintained by Citizen's State Bank of Grainfield. Because the machine is "off-line" (i.e., data is gathered by the machine for later transfer to a central computer), it is possible for a customer to withdraw more cash from his or her account than is actually in that account and thereby create an overdraft. The Citizen's State Bank has sought to prevent this situation by delivering a list of account balances recorded on fiche cards to a bank employee at the facility on a daily basis. The bank employee "screens" each customer wishing to use the automatic teller by checking the account balance of the customer with a microfiche reader and alerting the automatic teller when an inadequate account balance exists. Withdrawals of more than the account balance are thus prevented.

Mr. Roy P. Britton
Page Two
December 13, 1979

The specific question presented for our consideration is whether the use of the microfiche reader is a violation of K.S.A. 1978 Supp. 9-1111, which prohibits any bank from establishing or operating any branch bank, branch office, or place of business except as described within the statute. K.S.A. 1978 Supp. 9-1111(f) allows any state bank to "provide and engage in banking transactions by means of remote service units located anywhere within the state of Kansas." Sub-section (h) of the same statute defines "remote service unit":

"for purposes of this section, 'remote service unit' shall mean an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank. The term shall include 'on line' computer terminals and 'off line' automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine-read and verified. Withdrawals by means of 'off-line' systems shall not exceed \$300 per transaction and shall be restricted to individual not corporate or commercial accounts."

Is a microfiche reader equipment associated with an electronic information processing device within the meaning of the amended version of K.S.A. 9-1111(h)? We think not.

A similar question was directed to this office in 1978. Attorney General Opinion No. 78-181 concluded that

"a depository which is electronically interfaced with an automated customer service unit and physically associated therewith constitutes 'associated equipment [and] structures' which are operated

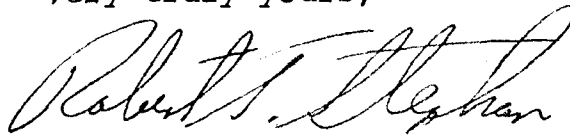
Mr. Roy P. Britton
Page Three
December 13, 1979

directly in conjunction with an 'electronic information processing device,' and is therefore, permissible under K.S.A. 9-1111."

The situation presented by the microfiche reader is somewhat different, however. The questionable equipment considered by the 1978 opinion was an automated teller which, when activated by a customer's identification card, enabled the customer to gain access to a bag depository which was a part of the machine. On the other hand, the microfiche reader described in the opinion request is operated by a bank employee who presumably needs nothing but the name of the customer to gain access to information concerning the account. The employee alerts the automated machine as to the status of the customer's account. It is important to note that, although a customer must use a plastic card to activate the teller, no such means of access is required for the microfiche reader. Therefore, the activation of the reader is not "dependent upon" the use of a machine readable instrument as is required by K.S.A. 1978 Supp. 9-1111(h). In fact, that statute specifically states that the term "remote service unit" shall not include automated teller machines using systems in which account numbers are not machine read and verified.

It is, therefore, our opinion that a microfiche reader which is not activated by a machine-readable instrument in the customer's possession and control, and which must be operated by an employee or agent of the bank, is not a constituent part of an electronic information processing device contemplated by K.S.A. 1978 Supp. 9-1111, and is not authorized by law to be used in connection with a bank's remote service unit.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk