



STATE OF KANSAS

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October 29, 1980

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ATTORNEY GENERAL OPINION NO. 80-236

Mr. Mel Battin
Assistant Consumer Credit Commissioner
535 Kansas Avenue, Suite 1114
Topeka, Kansas 66603

Re: Consumer Credit Code--Consumer Loans; Supervised
Lenders--Supervised Lender Fees

Synopsis: K.S.A. 1979 Supp. 16a-2-302 prescribes the method by which applicants for the status of supervised lenders shall be assessed investigation and license fees. Investigation fees are intended to cover expenses incurred by the Consumer Credit Commissioner in examining the financial responsibility, character and fitness of the applicant, and accordingly do not depend on the number of the applicant's business locations. License fees, however, are paid for each license held, with such licenses required for each place of business operated by the applicant. As such licenses are nontransferrable and nonassignable, new ones are required whenever the identity of the person operating under such licenses changes. Likewise, new investigation fees must be assessed if additional inquiries into the financial responsibility, character and fitness of the new applicant are needed. Cited herein: K.S.A. 16a-2-301, K.S.A. 1979 Supp. 16a-2-302, 16a-6-104.

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Dear Mr. Battin:

As Assistant Consumer Credit Commissioner for Kansas, you have requested the opinion of this office on several questions concerning the assessment of investigation and license fees under the Kansas Consumer

Credit Code. Specifically, you set out the following five questions, all of which deal with various situations in which these fees could be charged.

- 1) If a corporation or individual makes application for several licenses, may the investigation fee be assessed for each license?
- 2) May new investigation and license fees be assessed when a corporate licensee changes only the name of the corporation?
- 3) If a corporate licensee enters into a merger in which it is absorbed by another corporation, may new investigation and license fees be assessed for those places of business formerly operated by the dissolved corporation?
- 4) If a corporate licensee becomes the subsidiary of another corporate licensee, may new investigation and license fees be assessed?
- 5) If two corporate licensees enter into a merger from which one entirely new corporation results, may new investigation and license fees be assessed?

The statute which in our opinion speaks to the above is K.S.A. 1979 Supp. 16a-2-302. It sets out the steps which must be taken before a lender may become classified as a "supervised" one, and so eligible to make supervised loans pursuant to K.S.A. 16a-2-301. The statute itself is somewhat lengthy, and rather than quote what we believe to be the applicable sections here, reference will be made to them as each of your five separate queries is addressed. However, it may initially be noted that two different types of fees are involved, namely an investigation fee, which is intended to cover, at least in part, the costs of analyzing the fiscal soundness of the applicant, and a license fee, paid annually, of which 80% goes to operate the Consumer Credit Commissioner's office. At present, the investigation fee is set at \$50, while the license fee is \$100. Both are set by the Commissioner pursuant to K.S.A. 1979 Supp. 16a-6-104(6), subject to the approval of the council of advisors on consumer credit.

Your first inquiry concerns the situation where one individual or corporation makes application for several licenses at the same time. Such multiple applications would be necessary if the applicant had more than one place of business, as a separate license is required for each location by K.S.A. 1979 Supp. 16a-2-302(1)(a). Accordingly, a license fee may be properly assessed for each license which is granted [K.S.A. 1979 Supp. 16a-2-302(1)(d)]. However, in our opinion

it would be improper to require the payment of more than one investigation fee for such a situation, where one entity seeks licenses at the same time for all of its locations. We base this conclusion on K.S.A. 1979 Supp. 16a-2-302(2), where it is stated:

"No license shall be issued unless the administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof if the applicant is a copartnership or association and of the officers and directors thereof, if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act. An applicant meets the minimum standard of financial responsibility for engaging in the business of making supervised loans, under subsection (1) of K.S.A. 16a-2-301, if he or she has available for operation of that business assets of at least twenty-five thousand dollars (\$25,000) for each license issued by this or any other state."

As all of the locations would be under the control of the same person or corporation, a single investigation of that person (or of the officers and directors, if a corporation) would suffice to provide the above-required information. We do note, however, that where multiple licenses are desired, \$25,000 worth of assets must back each license. Additionally, this result would be different if the licenses were sought at different times [K.S.A. 1979 Supp. 16a-2-302(4)], since this would necessitate separate investigations.

Secondly, you ask whether new investigation and license fees may be assessed when a corporate licensee desires to change its name. We believe the answer is clearly provided by K.S.A. 1979 Supp. 16a-2-302(6), wherein it is stated:

"A licensee may conduct the business of making supervised loans only at or from any place of business for which he or she holds a license and not under any other name than that in the license. Loans made pursuant to a lender credit card do not violate this subsection." (Emphasis added.)

In this situation, the name on the license would now be different, resulting in the need for a new license. As no license can be issued except after a finding "upon investigation" by the Commissioner of the applicant's financial soundness [K.S.A. 1979 Supp. 16a-2-302(2)], the investigation fee could be properly assessed where an investigation is made. However, in many cases this may not need to be done, insofar as the Commissioner has previously investigated the corporation and only a name change is now being made, not a change in the corporate organization.

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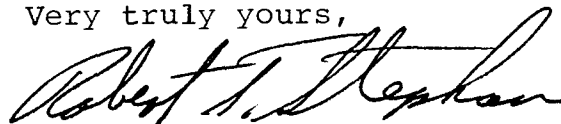
For your third question, you posit a set of facts in which a corporate licensee is absorbed into another corporation, although the places of business remain the same. Based on our findings above, we have no difficulty in concluding that new licenses and the accompanying fees would be required (due to the name change), and that a corresponding investigation would also be needed, due to the altered character of the corporation which is now in control of the business locations. Again, as above, only one investigation fee could be charged.

Fourthly, there exists the situation where one corporate licensee becomes the subsidiary of another corporate licensee, with the acquisition being achieved through stock purchases and not a merger. Here, we see the need for neither the issuance of new licenses or the making of another investigation, for the identity of the licensee has not changed. In addition, the parent corporation which is to exercise control has previously been approved through the investigation process. Needless to say, however, if locations formerly operated by the subsidiary are now taken over by the parent, new licenses will be required.

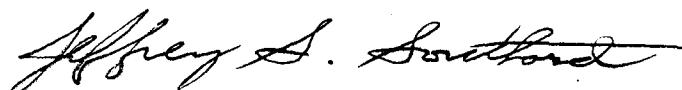
Finally, there is the case where two corporate licensees merge to form one new entity. As both the name of the resulting corporation and the make-up of its directors and officers would be new, the existing licenses would be invalid, and new ones required, together with the necessary investigative inquiries and fee.

In conclusion, K.S.A. 1979 Supp. 16a-2-302 prescribes the method by which applicants for the status of supervised lenders shall be assessed investigation and license fees. Investigation fees are intended to cover the expense incurred by the Consumer Credit Commissioner in examining the financial responsibility, character and fitness of the applicant, and accordingly do not depend on the number of the applicant's business locations. License fees, however, are paid for each license held, with such licenses required for each place of business operated by the applicant. As such licenses are nontransferable and nonassignable, new ones are required whenever the identity of the person operating under such licenses changes. Likewise, new investigation fees must be assessed, if additional inquiries are needed concerning the financial responsibility, character and fitness of the new applicant.

Very truly yours,



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Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

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