



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 81-189

Roy P. Britton
State Bank Commissioner
818 Kansas Avenue, Suite 600
Topeka, Kansas 66612

Re: Trust Companies and Business Trusts -- Change of
Trust Company's Location -- Approval of Bank Board

Synopsis: Those provisions of K.S.A. 17-2015 which require the state banking board's approval of a trust company's change in location are applicable to a trust company wherein moneys are currently on deposit. Accordingly, since Colonial Trust Company in Abilene, Kansas has current savings and time deposits, that company's proposed move to Great Bend, Kansas is subject to approval by the state banking board. Cited herein: K.S.A. 1980 Supp. 9-701, K.S.A. 17-2001, 17-2001b, 17-2003, K.S.A. 1980 Supp. 17-2013, K.S.A. 17-2014, 17-2015.

* * *

Dear Commissioner Britton:

You have advised of the possible change in ownership of Colonial Trust Company and, in connection therewith, a move of that company's location from Abilene to Great Bend, Kansas. Accordingly, you have requested our opinion as to whether such change in location is subject to the approval of the state banking board pursuant to K.S.A. 17-2015.

K.S.A. 17-2015 provides in relevant part as follows:

"No trust company which receives or is receiving deposits shall move or change its place of business from one city or township to another unless it first shall make and file with the state banking board an application so to do nor until such board shall give its written approval of such move or change." (Emphasis added.)

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Accompanying your inquiry was a copy of a letter from counsel for Colonial Trust Company to the state banking board's general counsel, in which the trust company's attorney offers his opinion that the proposed change in location is not subject to the banking board's approval, because "Colonial Trust Company is not receiving deposits." You also have furnished us with a copy of the letter you received from the banking board's general counsel stating the opposite conclusion, but suggesting that an opinion of this office be obtained.

Initially, we observe that Colonial Trust Company's daily statement of June 2, 1981, which you provided us, reveals savings deposits in the amount of \$442,311, which includes \$104,174 in savings accounts and \$338,137 in certificates of deposit. Moreover, we do not hesitate to conclude that such moneys being held by Colonial Trust Company are deposits within the meaning of K.S.A. 17-2015.

It is clear from various other provisions of K.S.A. 17-2001 et seq., particularly K.S.A. 17-2002b, 17-2003 and 17-2014, that moneys deposited with trust companies are subject to constraints similar to those imposed on state banks. It is appropriate, therefore, to note from K.S.A. 1980 Supp. 9-701, which defines various terms for the purpose of the state banking code, that the various deposits which may be accepted by state banks include a savings deposit, time certificate of deposit and time deposit, open account. Without burdening this opinion by setting forth the definitions of these various terms, suffice it to state that the moneys listed under "savings deposits" and "certificates of deposit" on Colonial Trust Company's June 2, 1981, daily statement of condition are encompassed within this statute's definitional framework. Such fact reinforces our conclusion that these moneys are deposits within the meaning of K.S.A. 17-2015.

Because neither the letter from Colonial Trust Company's attorney submitted with your request, nor the other materials you have furnished us, provide any insight as to the company's contention that it is not receiving deposits, we solicited further explanation thereof from the trust company's counsel. His response indicates that, since on or about January 1, 1979, when ownership of the Trust Company changed, "the Trust Company ceased opening new passbook and certificate accounts," and he also notes the "steady decline in the total deposits held by the Trust Company," by citing the decline in the company's total deposits from \$589,000 on December 31, 1979, to \$479,000 on December 31, 1980.

It is apparent from this response that the trust company's contention that it is not receiving deposits is predicated, at least in part, on equating "deposits" with "accounts," and

in our judgment, such premise is improper. The fact that the company has not opened any new accounts since the beginning of 1979 does not indicate that it has not received any deposits for that period of time. It merely reflects that the company has not accepted any new depositors. A deposit, on the other hand, is money placed with the trust company under one of the various types of contractual arrangements, and even though there has been a decline in the total amount of deposits, such fact does not necessarily indicate that the trust company is not currently receiving deposits.

In this regard, we have not been advised as to any legal impediment to a depositor adding moneys to an existing account. Thus, even though there has been a net decline in the moneys on deposit, such condition may well be the product of withdrawals in excess of deposits. It does not necessarily reflect the total absence of deposits.

Moreover, the trust company's attorney advises that the trust company has continued to renew governmental certificates of deposit and that there are currently \$232,000 of state and local funds on deposit. He suggests that the only reason for continuing to renew these deposits is "to avoid losses which would have been incurred in closing those accounts." This he explains, as follows: "The Trust Company owns U.S. Treasury securities which are pledged to secure governmental deposits. Due to market conditions, these securities would have been substantially discounted if sold, resulting in loss to the Trust Company." Notwithstanding this policy consideration, the fact remains that the trust company has a continuing practice of receiving public funds on deposit.

Conceding that the trust company has not added any new accounts since early in 1979, and even assuming arguendo that none of the non-governmental depositors has placed additional moneys in existing accounts since that time, we believe that Colonial Trust Company is a "trust company which receives or is receiving deposits" within the purview of K.S.A. 17-2015.

The trust company's counsel suggests that such conclusion requires an unwarranted construction of this statute, i.e., it requires construing the phrase "receives or is receiving" such that "receives" in effect means "received." This suggestion is supported by citation to various rules of statutory construction which are all contingent on the premise that the language of K.S.A. 17-2015 is plain and unambiguous. While we are well aware of the rules of statutory interpretation cited by the trust company's counsel, we cannot agree with his premise that the statutory language in question is plain and unambiguous. Here, it is interesting to note that counsel for the trust company has not offered any explanation of

what this "plain and unambiguous" language means, other than to suggest that "receives" does not mean "received" and that the statutory provisions in question do not apply to his client.

In our judgment, the phrase "receives or is receiving" in 17-2015 is ambiguous at best and susceptible of various interpretations. The obvious purpose of this statute is to define those trust companies which must seek approval of the state banking board before changing location. However, even if we interpret this statute as applying only to trust companies which presently receive moneys on deposit, as we assume the trust company's counsel is suggesting, the provision in question is still not free of ambiguity, since the statute provides no guidance as to the time frame by which this is to be measured.

In determining whether a trust company is one "which receives or is receiving deposits," does K.S.A. 17-2015 restrict us to a consideration of today's activities only, or may we look beyond today's activities into the past? If so, how far in the past may we look before we must determine that a trust company is not currently receiving moneys on deposit? Clearly, to answer these questions by strict reference to the vague time frame of "the present" subjects the statute to a multitude of interpretations. It requires arbitrary decisions from which absurd results may obtain.

Thus, because of this ambiguity, we must resort to well-established judicial guidelines for statutory interpretation. A comprehensive statement of the rules pertinent here is set forth in Brown v. Keill, 224 Kan. 195 (1978), as follows:

"The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted. (Farm & City Ins. Co. v. American Standard Ins. Co., 220 Kan. 325, Syl. ¶3, 552 P.2d 1363 [1976].) In determining legislative intent, courts are not limited to a mere consideration of the language used, but look to the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various constructions suggested. (State, ex rel., v. City of Overland Park, 215 Kan. 700, Syl. ¶10, 527 P.2d 1340 [1974].) In order to ascertain the legislative intent, courts are

not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia. When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the literal import of words or phrases which conflict with the manifest purpose of the legislature. (Kansas Commission on Civil Rights v. Howard, 218 Kan. 248, Syl. ¶2, 544 P.2d 791 [1975].)" Id. at 199, 200.

See, also, Whitehead v. State of Kansas Labor Department, 203 Kan. 159, 160, 161 (1979), and cases cited therein.

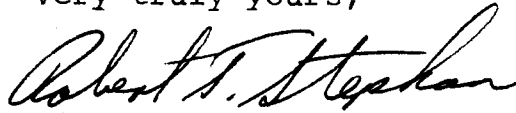
When the foregoing rules of construction are applied to the question presented here, we believe that the pertinent provisions of K.S.A. 17-2015 must be construed as requiring any trust company wherein moneys are currently on deposit to make application to and receive approval of the state banking board before changing its place of business from one city to another. Obviously, such construction provides a certainty of interpretation not afforded by construing the statute in the manner alluded to by Colonial Trust Company's counsel. Construing the statute in this fashion will avoid the ambiguity inherent in the alternative interpretation, which might bring into question the constitutionality of the statute. "[A] statute should never be given a construction that leads to uncertainty, injustice or confusion, if possible to construe it otherwise." Whitehead v. State of Kansas Labor Department, supra at 162. Thus, the conclusion we have reached will permit a harmonious application of the statute's requirements by both the state banking board and the trust company.

Moreover, it is apparent that our conclusion is consonant with the clear legislative intent manifested in K.S.A. 17-2001 et seq. to provide some measure of regulatory control over trust companies having moneys on deposit. As noted previously, there are several sections of this statutory sequence which impose greater regulatory constraints on such trust companies than on those which do not have moneys on deposit. An obvious purpose of these statutes is to afford protection to a trust company's depositors, and the interpretation we have placed on K.S.A. 17-2015 does nothing to jeopardize a harmonious construction of these statutes in pari materia.

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In summary, it is our opinion that those provisions of K.S.A. 17-2015 which require the state banking board's approval of a trust company's change in location are applicable to a trust company wherein moneys are currently on deposit. Accordingly, since Colonial Trust Company in Abilene, Kansas has current savings and time deposits, that company's proposed move to Great Bend, Kansas is subject to approval by the state banking board.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

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