



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 73

John A. O'Leary, Jr.
State Bank Commissioner
818 Kansas Avenue
Topeka, Kansas 66612

Re: Corporations -- Trust Companies and Business
Trusts -- Powers of Bank Commissioner and
Board; Rules and Regulations

Banks and Banking -- Banking Code; Supervision;
Commissioner -- Trust Companies; Rules and
Regulations

State Boards, Commissions and Authorities --
State Banking Board -- Trust Companies; Rules
and Regulations

Synopsis: Current rules and regulations explicitly covering
the procedures for the submission of applications
for bank charters are inapplicable to trust
companies. Neither the state bank commissioner
nor the state banking board is authorized by
statute to promulgate rules and regulations governing
the submission of applications for authority to
operate a trust company which is unrelated to a
bank. Present Kansas law does not require the
giving of public notice upon the filing of an appli-
cation for authority to operate a trust company.
Cited herein: K.S.A. 9-1602, 9-1606, 9-1701,
9-1713, 17-2001, 17-2014, 17-2015, 17-2022, 17-2023,
K.S.A. 1982 Supp. 74-3004, K.A.R. 17-16-1, 17-16-5.

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Dear Mr. O'Leary:

You inquire regarding the authority of the state bank commissioner with respect to applications for authority to organize and transact the business of a trust company. Your three specific questions will be answered in order as follows:

"1. Are the rules and regulations of the State Bank Commissioner governing applications for certificates of authority found at K.A.R. 17-16-1, et seq., applicable to the processing of this application?"

The application to which you refer is an application to organize a trust company under K.S.A. 17-2001, et seq. As noted in your request, the application is required to be filed with the state bank commissioner pursuant to K.S.A. 17-2022. The authority of the bank commissioner to promulgate K.A.R. 17-16-1 et seq., is derived from K.S.A. 9-1713, which specifically grants authority to the commissioner to adopt such rules and regulations to carry out the "intent and purposes of K.S.A. 9-701 et seq., commonly known as the state banking code." Correspondingly, all sections of these rules and regulations mention only applications concerning banks, and are silent regarding trust companies.

Your concern no doubt arises from the numerous references in the statutes relating to trust companies which make certain provisions of the banking code applicable to trust companies. See K.S.A. 17-2014 (penalties) and K.S.A. 17-2015 (impairment of capital and insolvency and shareholders' liability). Moreover, K.S.A. 9-1713, the statute authorizing the rules in question, refers to trust companies in the proviso regarding notice of the adoption of rules and regulations. However, we find no statute which specifically incorporates rules and regulations governing bank charter application procedures into the trust company application laws.

It seems clear to us that banks and trust companies are different legal entities and are so recognized by the language of all relevant statutes and case law. See International Mortgage Trust Co. v. Henry, 139 Kan. 154 (1934). The regulations fail to specifically include any reference to trust companies, and in our judgment there is no basis to imply such coverage into these rules and regulations.

"2. What is the authority of the State Bank Commissioner and State Banking Board to adopt rules and regulations governing applications for authority to organize trust companies?"

Corporations desiring to transact business as a trust company in this state may not "commence business until they have received authority from the bank commissioner." K.S.A. 17-2013. Clearly, the banking commissioner has general supervisory powers over trust companies. Id. However, as noted, the commissioner's powers to promulgate rules and regulations are restricted to those necessary to carry out the intent and purposes of the state banking code, which is codified in Chapter 9 of the Kansas Statutes Annotated. See K.S.A. 9-1713. Turning to the banking code, we note that the commissioner could adopt rules and regulations to govern a bank's application to obtain trust authority. K.S.A. 9-1602. See also 9-1606 (merger of banks and trust companies). Likewise, the commissioner might adopt rules for the examination of banks and trust companies pursuant to K.S.A. 9-1701. However, we find nothing in Chapter 9 of the Kansas Statutes Annotated (the banking code) which concerns the granting of authority to trust companies unrelated to banks. Instead, this latter subject is governed by Article 2 of Chapter 17 of the Kansas Statutes Annotated.

We note further that K.S.A. 1982 Supp. 74-3004, which establishes the state banking board, no longer mentions rule-making authority. Prior law made reference to rules and regulations governing the board, and the authority to make rules and regulations to implement the board's responsibilities toward trust companies pursuant to K.S.A. 17-2022 might have been implied. However, 1981 amendments deleted all reference to rule-making authority of the board with regard to trust companies. L. 1981, ch. 299 §5. Therefore, in answer to your question, we find no express or implied authority for the state bank commissioner or the state banking board to promulgate rules and regulations governing the submission of applications by trust companies which are unrelated to banks.

"3. Do K.S.A. 17-2022 and 17-2023, or any other statutes or principles of law, require that notice be given of the filing of an application to organize and transact business as a trust company and the investigation of the application by the State Banking Board and, if so, what notice is required?"

Neither K.S.A. 17-2022 nor 17-2023 requires the giving of individual or public notice of the filing of an application for a grant of trust powers under K.S.A. 17-2001 et seq. Likewise, we know of no other statute or regulation which requires the giving of notice in the case of trust company applications. Such result is, of course, different from that regarding bank charter applications which are affected by the notice requirements of K.A.R. 17-16-5.

John A. O'Leary, Jr.

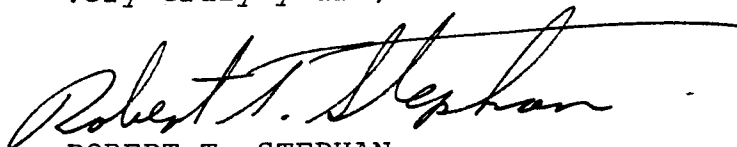
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We are aware of no Kansas common law principle which would require the giving of public notice in the absence of a statute.

Therefore, in our opinion, Kansas law currently does not require the giving of public notice upon the filing of an application for authority to operate a trust company.

In summary, it is our opinion that current rules and regulations explicitly covering the procedures for the submission of applications for bank charters are inapplicable to trust companies. Neither the state bank commissioner nor the state banking board is authorized by statute to promulgate rules and regulations governing the submission of applications for authority to operate a trust company which is unrelated to a bank. Present Kansas law does not require the giving of public notice upon the filing of an application for authority to operate a trust company.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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