



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 100

John O'Leary, Jr.  
State Bank Commissioner  
700 Jackson, Suite 300  
Topeka, Kansas 66603

Re: Banks and Banking -- Banking Code; Powers -- Branch  
Banking Prohibition; Interstate Contract for Use  
of Remote Service Units

Synopsis: K.S.A. 9-1111(f) provides that any state bank or  
national banking association located in Kansas may  
operate remote service units, by means of which  
banking transactions may take place. Such facili-  
ties may be located anywhere within the state, in-  
cluding at the place of business specified in the  
bank's certificate of authority. Any state bank  
or national banking association located in Kansas  
may enter into agreements with any other banks  
having their principal place of business in this  
state for the joint operation of such facilities.  
In the absence of statutory authority, however,  
Kansas banks may not enter into such contracts with  
state or national banks located in other states.  
Cited herein: K.S.A. 9-1111, K.S.A. 1982 Supp.  
17-5565, 12 U.S.C. §36.

\* \* \*

Dear Commissioner O'Leary:

As Bank Commissioner for the State of Kansas, you have re-  
quested the opinion of this office on a matter concerning  
the operation of remote service units, as that term is used  
in K.S.A. 9-1111. This statute, the so-called branch bank-  
ing statute, allows a state or national bank to operate re-  
mote service units in this state, and does not consider such  
units to be branches, the operation of which is prohibited.

Your inquiry stems from a situation involving a Kansas state bank and a national bank located in Missouri, and raises the question of whether two banks so situated may jointly operate remote service units.

Prior to examining the legal issues involved, a brief summary of the facts set out in your letter and the accompanying materials would be helpful. United Missouri Bank of Kansas City, N.A., (UMB) is a national banking association organized and doing business in Kansas City, Missouri. Almost 100% of its stock is owned by United Missouri Bancshares, a Missouri bank holding company that also owns a controlling interest in 19 other Missouri banking corporations. UMB has obtained the right to use the name "Ultra" in connection with automatic teller machines and the encoded plastic cards used to activate such machines. It has entered into contracts with 7 other banks in the Kansas City metropolitan area whereby the banks, referred to as correspondent banks, may use the Ultra name in connection with automatic teller machines located on their premises. While 5 of the 7 banks are controlled by United Missouri Bancshares, one of the others is a Kansas bank located in Overland Park, Kansas. The contracts have resulted in a network of automatic teller machines operating at 15 locations, each of which is tied in to the central computer at UMB. Each correspondent bank either owns or leases the machines located on its premises.

As part of the contract, the correspondent bank permits customers of UMB, as well as all other banks who have signed contracts with UMB, to have access to its Ultra machine. The Ultra card activates the machine, and allows the customer to perform six different transactions: withdrawal of cash from a checking account; transfer of money from a checking account to a savings account; transfer of money from a savings account to a checking account; withdrawal of cash from a MasterCard line of credit; transfer of money from a MasterCard line of credit to a checking account; and inquiries concerning account balances. Therefore, a UMB customer with an Ultra card may enter into any of the above transactions at any of the 15 locations, including those in Kansas. Likewise, a customer of the Overland Park bank may use both the Kansas and Missouri machines for his or her banking transactions. Each transaction is reflected in the computer record at UMB, and the changed balance in a customer's account will subsequently show in all 15 of the outlets.

The legal question presented by this fact situation concerns the authority of the Overland Park bank to enter into such an agreement with a bank in another state. The fact that UMB is a national association is not determinative, for in questions regarding branch banking, state law controls when, where,

and how a national bank may branch, if indeed it may do so at all. State ex rel. Edwards v. Heimann, 633 F.2d 886 (9th Cir. 1980), applying 12 U.S.C. §36. Accordingly, reference must be had to the applicable provision of the Kansas Banking Code, specifically, K.S.A. 9-1111. We further note that, in the interest of maintaining competitive equality between state and national banks [First National Bank v. Walker Bank & Trust Co., 385 U.S. 252, 17 L.Ed.2d 343 (1966)], remote service units have been held by federal courts to constitute branch banks. State of Colorado v. First National Bank of Fort Collins, 540 F.2d 497 (10th Cir. 1976), and cases cited at 499.

Initially, K.S.A. 9-1111 contains a general prohibition against establishment of any branch bank, office, agency or place of business by a bank doing business in this state. Three exceptions are then made to this general prohibition, e.g. for attached auxiliary teller facilities, detached auxiliary banking service facilities, and remote service units. Remote service units are defined at K.S.A. 9-1111(h) to mean the following:

"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 'online' computer terminals and 'offline' automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines . . ."

From the above, there can be no question that the automatic teller machines described above fall within the class of remote service units for purposes of Kansas law.

Authorization for operation of remote service units is contained in subsection (f) of the statute, which states:

"any state bank or national banking association having its principal office and main banking house in this state, individually or jointly with one or more state banks or national banking associations having their principal offices and main banking houses in this state, may provide, and engage in banking transactions by means of remote service units located anywhere within the state of

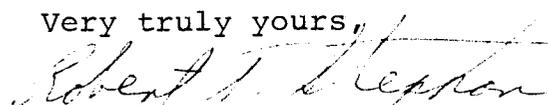
Kansas, which remote service units shall not be considered to be branch banks, or branch offices, agencies or places of business, or detached auxiliary services facilities authorized herein. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;" (Emphasis added.)

It is important to note that while the subsection allows the joint operation of remote service units by two or more state or national banks, the grant of authority is explicitly limited to those banks "having their principal offices and main banking houses in this state." While subsection (g) permits the type of unit sharing which was described above, i.e., a bank with a remote service unit must allow customers of another bank to use the facility, subsection (f) controls the type of agreements which can be made initially for the joint operation of such facilities, and is silent as to the type of agreement entered into in the above scenario.

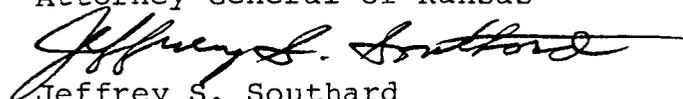
Also relevant is the recent action of the 1982 Kansas Legislature in amending K.S.A. 17-5565. L. 1982, ch. 106. As amended, this statute now allows savings and loan associations to contract with other such associations for the operation of remote service units in Kansas or in other states. There is no requirement that all of the associations have their principal place of business in this state, for indeed the statute expressly permits "foreign" savings and loan associations to operate such units in Kansas, provided that reciprocal privileges are afforded to Kansas associations in the other state. Accordingly, it is clear that the legislature, when it desires to do so, is capable of opening the door for out-of-state financial institutions to operate remote service units in Kansas. To date, it has not seen fit to amend K.S.A. 9-1111 in the Banking Code in the same way as K.S.A. 1982 Supp. 17-5565 of the Savings and Loan Code, and we are not prepared to read into the former statute by implication what the legislature has declined to put there expressly.

Therefore, in our opinion a Kansas bank is without authority to enter into an agreement for the joint operation of remote service units, such as automatic teller machines, with another bank which does not have its principal place of business located in this state.

Very truly yours,

  
ROBERT T. STEPHAN

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