



STATE OF KANSAS

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August 16, 1984

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ATTORNEY GENERAL OPINION NO. 84- 84

The Honorable William W. Buntен
State Representative, 54th District
1701 W. 30th Street
Topeka, Kansas 66611

Re: Elections -- Corrupt Practices -- Contributions by
Corporations; Holding Companies Not Carrying on the
Business of a Bank

Synopsis: K.S.A. 25-1709 prohibits corporations carrying on the
business of a bank from making contributions to
political parties. As previously discussed in At-
torney General Opinion No. 82-280, the "business of
a bank" involves accepting deposits, allowing with-
drawals, and paying interest on accounts. As a
company which owns all or a portion of the stock of
a bank is itself not engaged in the business of bank-
ing, it is not subject to the prohibitions of the
statute, and may make contributions to political cam-
paigns or political parties, subject to applicable
federal laws. Cited herein: K.S.A. 9-504, 9-505a,
9-701, K.S.A. 1983 Supp. 9-1101, as amended by L.
1984, ch. 48, §4, K.S.A. 1983 Supp. 25-1709, K.S.A.
25-1710, 2 U.S.C.A. §441b, 11 C.F.R. §§114.1, 114.2.

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Dear Representative Buntен:

As State Representative for the 54th District, which is included
within Shawnee County, you request our opinion on a question
concerning K.S.A. 1983 Supp. 25-1709. That statute, which is
contained in the Corrupt Practices section of the statutes con-

cerning elections, prohibits certain entities from making contributions to political campaigns or political parties. Among these entities are any "corporation carrying on the business of a bank." You inquire whether this language would prohibit a company which controls a bank through ownership of the bank's stock from making such contributions.

K.S.A. 25-1709 was enacted in 1911, and is one result of the progressive movement which ran strongly through Kansas and national politics of the time. See, e.g. Robert S. LaForte, Leaders of Reform, Kansas University Press (1974), ch. 7. Except for a technical amendment in 1982 (L. 1982, ch. 156) which removed a phrase which had been determined to be unconstitutional [Attorney General Opinion No. 78-214, citing First National Bank of Boston v. Belotti, 435 U.S. 765, 55 L.Ed.2d 707 (1978)], the statute has remained unchanged since that time. This has caused problems in interpretation on at least one previous occasion, where it was questioned whether savings and loan associations were included within the coverage of the statute. As savings and loan associations did not exist as such in 1911, it was necessary to look to the purposes of the statute, as well as the types of activities which savings and loan associations conduct. When this was done, it was concluded that, while not technically banks, such associations are "carrying on the business of a bank," and so should be included within K.S.A. 1983 Supp. 25-1709. Attorney General Opinion No. 82-280.

K.S.A. 1983 Supp. 25-1709 states:

"No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas electric light, heat, power, or water company, or any company having the right to take or condemn land or to exercise franchises in public ways granted by the state or by any county or city, and no trustee or trustees owning or holding the majority of the stock of such corporation, shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person to public office, or in order to aid, promote or antagonize the interests of any political party. No person shall solicit or receive such payment or contribution from such corporation or such holders of stock."

Violation of the above provisions is punishable by the civil penalties of K.S.A. 25-1710, which are set at maximum fines of

\$10,000 and \$1,000 for corporations and individuals, respectively. These statutes are clearly enacted for the protection of the public, for as Attorney General Opinion No. 77-230 noted:

"All corporations conducting the businesses enumerated in (the) statute are traditionally subject to fairly close and pervasive public regulation. Their operations are directly affected by legislative and regulatory policy, and as a result they have a particularly keen economic interest in the political process. Presumably the 1911 legislation perceived that corporations in these regulated industries might seek to exercise untoward and oppressive influence on that process through the leverage of political contributions and chose to prohibit them entirely"

As such, even though containing civil penalties, the act containing K.S.A. 1983 Supp. 25-1709 should be liberally construed, and is not penal in nature. State ex. rel. Murray v. Palmgren, 231 Kan. 524, 530-31 (1982). To the extent that a prior opinion of this office contained at VII Opinions of the Attorney General, p. 535 (1972) differs in this conclusion, it is withdrawn.

If a company which owns all or part of the stock in a bank is to be covered by K.S.A. 1983 Supp. 25-1709, it must be concluded that either: (1) because of this control, the holding company is "carrying on the business of a bank" or (2) it falls under the prohibition against a "trustee" who owns or holds a majority of the stock of one of the included groups of corporations, i.e. a bank. If neither of these conditions is present, then a holding company would not be covered by the ban on contributions imposed by the statute. (Note: while a company which owns the stock of a bank is commonly referred to as a bank holding company, legally such an entity cannot exist in Kansas, given the wording of K.S.A. 9-504(a) and 9-505a. Therefore, we will refer in this opinion to "holding companies," which under Kansas law are allowed to own up to 100% of one bank and less than 25% of other banks.)

The question of whether stock ownership constitutes being a trustee has been previously discussed by an opinion of this office. In a letter dated September 1, 1972 to Representative Richard Loux, Attorney General Miller concluded that the word trustee did not include stockholders who held stock for their own benefit, stating:

"The word 'trustee' in K.S.A. 25-1709 must, in our view, be given its ordinary meaning, to describe one holding a majority of shares in behalf of another. It does not refer, in our opinion, to a majority share holder who may be deemed a 'trustee' only with reference to the general fiduciary obligations owed to minority stockholders described above. Accordingly, it is our opinion that K.S.A. 25-1709 does not prohibit an individual, owning a majority of the shares of stock in one of the enumerated corporations in his own behalf and not as trustee for another, from making political contributions which are prohibited to the corporation itself." (VII Atty. Gen. Opin. No. 535.)

We concur with this conclusion, for a holding company possessing stock in a bank is an outright owner, and does not function as a trustee owing a duty to manage the equitable interest of another. Were such broader coverage desired, it could be included, as has been done in New Jersey, where a comparable statute provides that "no corporation, person, trustee or trustees owning or holding the majority of stock in any such corporation, shall pay or contribute . . ." (N.J.S.A. 19:34-45). While liberal construction is to be afforded to K.S.A. 25-1709, we do not believe that a court would read the statute broadly enough to include a holding company under the phrase "trustee or trustees owning or holding the majority of stock."

In our opinion, the question of whether a holding company is carrying on the business of a bank through its ownership of stock in a bank must also be answered in the negative. As noted above, Attorney General Opinion No. 82-280 concluded that because a savings and loan association had the powers of a bank (e.g. received deposits, permitted withdrawals and paid interest on accounts), it was carrying on the business of a bank so as to come within the scope of the statute. A holding company is engaged solely in the ownership of stock in a bank, as well as other, non-bank corporations, and does not possess the powers given to banks by Kansas statutes. K.S.A. 9-701, K.S.A. 1983 Supp. 9-1101, as amended by Laws 1984, chapter 48, section 4.

This conclusion is consistent with prior attorney general opinions construing this statute. In Opinion No. 77-116, Attorney General Schneider stated:

"Under K.S.A. 25-1709, a parent corporation which owns a subsidiary which falls within the class of corporations prohibited from making contributions, but which itself does not carry on any of the businesses or exercise any of the privileges recited therein, is not prohibited from making political contributions by virtue of its stock ownership in such covered corporations. Similarly, a corporation which does not carry on any of such businesses, or exercise any of the specified privileges, is not prohibited from making contributions merely by ownership of its stock by a corporation which is covered by this section."

Again, while the legislature could by amendment bring holding companies under the scope of K.S.A. 1983 Supp. 25-1709, given the wording of the existing statute we do not believe that even a liberal construction of the present language can find that such companies are now included.

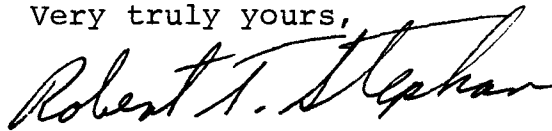
Despite our conclusion that holding companies are not within the scope of K.S.A. 1983 Supp. 25-1709, there exist federal statutes which also must be considered. As a matter of federal law, national banks are prohibited from making contributions or expenditures in connection with elections to political office at the local, state or national level. 2 U.S.C.A. §441b(a), 11 C.F.R. §§114.1(a), 114.2(a). However, holding companies organized under state law which own national banks may make contributions to state and local candidates, subject to state law. However, even where state law does not prohibit such contributions, as in Kansas, federal law imposes two conditions: (1) no funds may be contributed which are derived from the operations of the national bank; and (2) the contributions may not be made or used, directly or indirectly, in connection with a federal election. Federal Election Commission Advisory Opinion No. 1981-61, Federal Election Campaign Finance Guide (CCH), ¶5641 (February 5, 1982), Advisory Opinion No. 1891-49, supra, ¶5638 (January 29, 1982).

In conclusion, K.S.A. 25-1709 prohibits corporations carrying on the business of a bank from making contributions to political campaigns or political parties. As previously discussed in Attorney General Opinion No. 82-280, the "business of a bank" involves accepting deposits, allowing withdrawals, and paying interest on accounts. As a company which owns all or a portion of the stock of a bank is itself not engaged in the business of

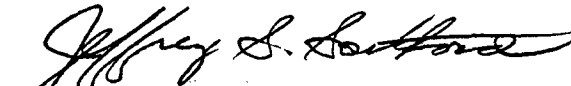
The Honorable William W. Bunten
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banking, it is not subject to the prohibitions of the statute,
and may make contributions to political campaigns or political
parties, subject to applicable federal laws.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw