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September 12, 1985

ATTORNEY GENERAL OPINION NO. 85-118

Eugene T. Barrett, Jr.  
Kansas Bank Commissioner  
700 Jackson, Suite 300  
Topeka, Kansas 66603

Re: Banks and Banking--Banking Code; Powers--Branch  
Banking; Remote Service Units; Night Depositories

Synopsis: A night depository which is both electronically interfaced with a remote service unit and physically attached thereto is defined under K.S.A. 1984 Supp. 9-1111(g) and (h) as a remote service unit. However, the installation of a night depository which is not electronically interfaced with the unit and accessed by the use of a machine readable instrument constitutes a detached auxiliary banking services facility, and is subject to the limitations of K.S.A. 1984 Supp. 9-1111(c), (d) and (e). In addition, while a bank is required to share its remote service units with other banks subject to K.S.A. 1984 Supp. 9-1111(g), a combined remote service unit and detached auxiliary banking services facility is not required to be shared. Cited herein: K.S.A. 1984 Supp. 9-1111.

\* \* \*

Dear Commissioner Barrett:

As Bank Commissioner of the State of Kansas, you request our opinion on a question concerning remote service units and night depositories. Specifically, you inquire whether a bank may

install a night depository in conjunction with a remote service unit at a site located off the premises of the main bank facility, and whether the bank is under a duty to share the unit with other banks.

K.S.A. 1984 Supp. 9-1111(f) provides that "any state bank . . . may provide and engage in banking transactions by means of, remote service units located anywhere within the state of Kansas . . ." Subsection (h) defines "remote service unit" to mean:

"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 . . . 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 'on line' computer terminals and 'off line' automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine-read and verified." (Emphasis added.)

The term "banking transactions" in subsection (f) above is not defined within the statute. Therefore, it is not clear whether "banking transactions" includes the type of deposits anticipated when a night depository is attached to a remote service unit.

Attorney General Opinion 78-181 provides guidance in the interpretation of K.S.A. 1984 Supp. 9-1111(f) and (h). In that opinion, a "bag depository" which was electronically interfaced with an automated remote service unit was found to be a permissible constituent part of a remote service unit. That opinion describes the operation of the "bag depository" as follows:

"By inserting a card, the customer causes a security door to open, providing access to the operation console. After keying in a four digit identification number, the customer then selects the type of transaction which he or she wishes to make, including cash withdrawal, deposit, transfer money, or payments. Under each of these transaction classes, the

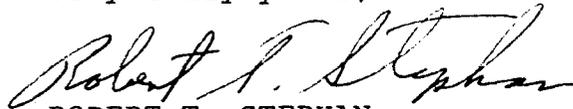
customer must select a particular button describing the nature of the particular transaction involved. For example, under cash withdrawal, the customer may withdraw money from either a savings or checking account. Under the deposit type of transaction, the customer may make a deposit to a checking account, savings account or may make a bag deposit. If the customer selects a bag deposit, he presses the 'Bag Deposit' button. The terminal, which is electronically interfaced with the bag depository, unlocks the depository. The customer drops the bag into the chute, and the depository relocks itself. The customer receives a receipt and the return of his or her card at the same place on the automated teller console as in the case of any other transaction. In the instance of a bag deposit, the receipt does not show the amount of the deposit, because the facility is designed to permit deposits without requiring the person delivering the money to key in the amount of the deposit."

It is important to note that the deposit in that situation could only be made by accessing the unit with the use of a machine--readable instrument in the possession and control of the holder of an account with a bank. See K.S.A. 1984 Supp. 9-1111(h). We concur in this result, and conclude that the installation of a depository which is operated directly in conjunction with an "electronic information processing device" and is electronically interfaced with a remote service unit is permissible under the statute, which further requires that the facility be shared with other banks upon their request. K.S.A. 1984 Supp. 9-1111(g).

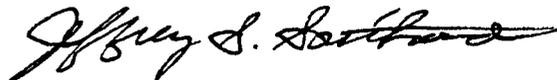
However, the installation of a night depository, in a remote service unit which is not accessed by the use of a machine readable instrument, is not within the scope of K.S.A. 1984 Supp. 9-1111(h). A night depository constructed in this manner would be considered a "detached auxiliary banking services facility" [see K.S.A. 1984 Supp. 9-1111(c)], as it would be a place where deposits would be made. While this result would require the facility to meet the requirements of subsections (c), (d) and (e) of the statute, as a detached auxiliary banking services facility it would not have to be shared with other banks. [K.S.A. 1984 Supp. 9-1111(g)]. This would be true even if a remote service unit is attached, which would likewise not be required to be shared.

In conclusion, a night depository which is both electronically interfaced with a remote service unit and physically attached thereto is defined under K.S.A. 1984 Supp. 9-1111(g) and (h) as a remote service unit. However, the installation of a night depository which is not electronically interfaced with the unit and accessed by the use of a machine readable instrument constitutes a detached auxiliary banking services facility, and is subject to the limitations of K.S.A. 1984 Supp. 9-1111(c), (d) and (e). In addition, while a bank is required to share its remote service units with other banks subject to K.S.A. 1984 Supp. 9-1111(g), a combined remote service unit and detached auxiliary banking services facility is not required to be shared.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
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RTS:JSS:jm