



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 6, 1985

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

ATTORNEY GENERAL OPINION NO. 85- 148

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

Re: Banks and Banking -- Banking Code; Crimes and
Punishments -- Unlawful Banking

Synopsis: K.S.A. 9-2011 prohibits individuals, firms or corporations from advertising that they are engaged in the banking business without obtaining authority from the bank commissioner, and is applicable only to those institutions which engage in "banking" as defined by K.S.A. 9-702. Accordingly, K.S.A. 9-2011 is not applicable to an institution such as a federal land bank which is not empowered to "receive money on deposit" or issue checks, drafts or "other evidence of indebtedness" for which it charges a fee, pursuant to K.S.A. 9-702. Cited herein: K.S.A. 9-702, 9-2011, 12 U.S.C. §§2033, 2071.

*

*

*

Dear Commissioner Barrett:

As State Bank Commissioner for the State of Kansas, you request our opinion on a question concerning the application of K.S.A. 9-2011. Specifically, you ask whether K.S.A. 9-2011 applies to institutions using the words "bank" or "banc" in their corporate name. Further, you inquire whether federal land banks and similar federally-chartered corporations come within the purview of K.S.A. 9-2011.

K.S.A. 9-2011 states as follows:

"It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that they are engaged in the banking business, without first having obtained authority from the bank commissioner as herein provided. Any such individual or member of any such firm or officer of any such corporation so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$5,000." (Emphasis added.)

In order to determine which institutions fall within the purview of K.S.A. 9-2011, it is necessary to define the term "banking" or "banking business" as it is used in K.S.A. 9-2011. "Banking" is defined in K.S.A. 9-702 to mean:

"Any individual, firm or corporation, except a national bank who shall receive money on deposit, whether on certificates or subject to check, or any individual, firm or corporation, except railroad, transoceanic steamship, air transport, telegraph or Morris plan companies, or building and savings and loan associations, or national banks, or express companies engaged in an international financial and travel business or credit unions, which shall receive money for which it issues its check, draft, bill of exchange, or other evidence of indebtedness for which it charges a fee, shall be considered as doing a banking business, and shall be amenable to all the provisions of this act: Provided, That promissory notes issued for money received on deposit shall be held to be certificates of deposit for the purposes of this act." (Emphasis added.)

In our opinion, in determining which institutions fall within the reach of K.S.A. 9-2011, it is appropriate to read the

statute in conjunction with K.S.A. 9-702, which as part of the Banking Code is in pari materia with K.S.A. 9-2011. Accordingly, only those institutions which engage in the type of activities described by K.S.A. 9-702 would fall under the auspices of K.S.A. 9-2011, which is therefore not automatically applicable to all institutions using the words "bank" or "banc" in their corporate names.

In order to determine whether a federal land bank and similar federally-chartered corporations come within K.S.A. 9-2011, we must examine the elements of "banking" as defined in K.S.A. 9-702. In our opinion, by definition a federal land bank would not fall within the scope of K.S.A. 9-702. 12 U.S.C. §§2033 essentially provides each federal land bank with the power to issue notes, to buy and sell obligations of, or insured by, the United States or any "bank" in the farm credit system, and to make loans. However, this section does not empower the federal land bank to "receive money on deposit" or issue checks, drafts or other "evidence of indebtedness" for which it charges a fee, pursuant to K.S.A. 9-702. The same reasoning would be applicable to other institutions established under the farm credit system which use "bank" in their title, such as federal intermediate credit banks. 12 U.S.C. §2072.

Apart from such federally-chartered corporations or instrumentalities, however, K.S.A. 9-2011 would prohibit the use of the words "bank" or "banc" by a company which met the tests of K.S.A. 9-702. For example, a company engaged in the business of making home loans secured by mortgages which raises funds through the issuance of certificates of deposit would meet the requirements of K.S.A. 9-702. As a result, it would be precluded from advertising itself as a "mortgage bank." For an opinion which reached the same result concerning savings and loan associations, see Attorney General Opinion No. 84-85.

In conclusion, K.S.A. 9-2011 prohibits individuals, firms or corporations from advertising that they are engaged in the banking business without obtaining authority from the bank commissioner, and is applicable only to those institutions which engage in "banking" as defined by K.S.A. 9-702. Accordingly, K.S.A. 9-2011 is not applicable to an institution such as a federal land bank which is not empowered to

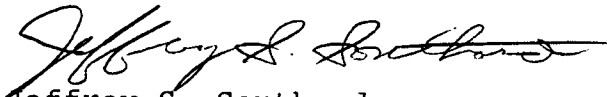
Eugene T. Barrett, Jr.
Page 4

"receive money on deposit" or issue checks, drafts or "other evidence of indebtedness" for which it charges a fee, pursuant to K.S.A. 9-702.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw