



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 80

Rita D'Agostino
General Counsel
Banking Department
700 Jackson, Suite 300
Topeka, Kansas 66603

Re: Banks and Banking -- Banking Code; Dissolution;
Insolvency -- Authority of FDIC as Receiver of a
Failed Bank

Synopsis: As receiver of a failed bank, the FDIC, under the direction of the State Bank Commissioner, shall take charge of the bank, its assets and property, and liquidate the affairs and business thereof for the benefit of the bank's depositors, creditors and stockholders. The FDIC as receiver may sell or compound all bad and doubtful debts and sell all the property of the bank upon such terms as the district court shall approve. Cited herein: K.S.A. 9-1901; 9-1902; 9-1903; 9-1904, 9-1905; K.S.A. 1985 Supp. 9-1906; K.S.A. 9-1907; 9-1912; 9-1913.

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Dear Ms. D'Agostino:

As General Counsel for the Banking Department of the State of Kansas, you request our opinion concerning the Federal Deposit Insurance Corporation (FDIC). Specifically, you are concerned with the authority of the FDIC, acting as a receiver of a failed bank, to transfer stock of a shareholder of the failed bank to a buyer.

K.S.A. 9-1902 states:

"A bank or trust company shall be deemed to be insolvent when (1) the actual cash market value of its assets is insufficient to pay its creditor liabilities except that for this purpose unconditional evidence of indebtedness of the United States of America may be valued, at the discretion of the commissioner, at par or cost whichever is the lesser; (2) when it is unable to meet the demands of its creditors in the usual and customary manner; (3) when it shall fail to make good its reserve as required by this act."

Under the laws of Kansas, a bank may be voluntarily or involuntarily dissolved. K.S.A. 9-1901 grants authority to a bank's stockholders to voluntarily submit a petition to the district court. In an involuntary dissolution, K.S.A. 9-1903 commands the Commissioner of the Banking Department for the State of Kansas to take charge of a bank found to be insolvent. K.S.A. 9-1904 allows stockholders to then submit a plan of reorganization. Should this plan of reorganization of the stockholders be unsatisfactory, the Commissioner retains control of the bank. If he or she is satisfied that the bank cannot resume business or liquidate to the satisfaction of its depositors and creditors, the Commissioner shall appoint a receiver. K.S.A. 9-1905.

The Commissioner may tender the receivership to the FDIC. Should the FDIC accept the tender, the FDIC becomes the receiver of the insolvent bank. K.S.A. 9-1907. While a bank is in receivership, the Commissioner examines the bank at least once every six months, and files a copy of his or her report to the district court. K.S.A. 9-1912. Furthermore, the receiver must report to the Commissioner in the same manner as required of other banks. K.S.A. 9-1913.

K.S.A. 1985 Supp. 9-1906 states:

"(a) The receiver, under the direction of the commissioner, shall take charge of any insolvent bank or trust company and all of its assets and property, and liquidate the affairs and business thereof for the benefit of its depositors, creditors and stockholders. The receiver may sell or

compound all bad and doubtful debts and sell all the property of the bank or trust company upon such terms as the district court of the county where the bank or trust company is located shall approve. The receiver shall pay over all moneys received to the creditors and depositors of such bank or trust company as ordered by the commissioner.

"(b) In distributing assets of an insolvent bank or trust company in payment of its liabilities, the order of payment, in the event its assets are insufficient to pay in full all of its liabilities, shall be by category as follows:

"(1) The costs and expenses of the receivership;

"(2) claims which are secured or given priority by applicable law;

"(3) claims of unsecured depositors;

"(4) all other claims exclusive of claims on capital notes and debentures;

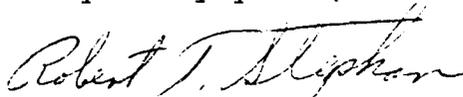
"(5) claims on capital notes and debentures.

"Should the assets be insufficient for the payment in full of all claims within a category, such claims shall be paid in the order provided by other applicable law or, in the absence of such applicable law, pro rata."

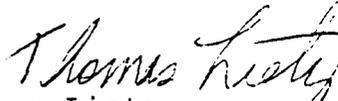
The above statutes grant the FDIC authority to sell the stock of a shareholder of a failed bank to a buyer, provide for the order of disbursement of assets and safeguard everyone's interests through the approval and supervision of the Commissioner and the district court. The language of K.S.A. 1985 Supp. 9-1906 "for the benefit of its depositors, creditors and stockholders," is further evidence of legislative intent to protect all parties in interest.

In conclusion, the FDIC's authority as receiver of a failed bank includes the power to compound, sell and liquidate all of a failed bank's assets, property and liabilities with the approval of the district court. Upon receipt of monies for these actions, the FDIC must then pay over all monies, as ordered by the Commissioner and approved by the district court, to all parties of interest.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General

RTS:JLM:TL:crw