



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 24, 1988

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

ATTORNEY GENERAL OPINION NO. 88- 43

W. Newton Male, Commissioner
State Banking Department
700 Jackson, Suite 300
Topeka, Kansas 66603-3714

Re: Banks and Banking -- Banking Code; Powers -- Branch
Banking; Loan Production Offices

Synopsis: While the general business of a state bank must be transacted at the place of business specified on its certificate of authority, the commissioner may, in accordance with K.S.A. 1987 Supp. 9-1715, allow a state bank to engage in an activity in which it could engage if it were a federally chartered bank. As national banks may establish loan production offices without violating branch banking statutes, the commissioner could allow the same for state banks. To the extent that relevant statutes have been amended, Attorney General Opinions No. 78-109 and 78-115 are superseded. Cited herein: K.S.A. 1987 Supp. 9-1111; 9-1127b; 9-1715; K.S.A. 9-1715 (Ensley, 1982); K.S.A. 9-1715 (Weeks, 1975); L. 1986, ch. 57, §§ 8, 11; L. 1984, ch. 48, § 5; 12 U.S.C. §§ 36(f), 81, 1843(c)(8) (1986); 12 C.F.R. § 7.7380 (1987), 12 C.F.R. Part 225 (1987).

* * *

Dear Commissioner Male:

As State Bank Commissioner, you have requested our opinion concerning the general business of banking. Specifically, you

have inquired whether operating a loan production office would be limited by the branch banking provisions of K.S.A. 1987 Supp. 9-1111. You cite Attorney General Opinions No. 78-109 and 78-115 (Schneider, Attorney General) which indicate that operating a loan production office (LPO) would violate K.S.A. 9-1111 (L. 1984, ch. 48 § 5). However, subsequent statutory amendments appear to change the conclusions reached in those opinions.

While branch banking is limited by K.S.A. 1987 Supp. 9-1111, we do not believe that the limitations contained therein were intended to apply to an LPO. We begin with the language of K.S.A. 1987 Supp. 9-1111 which states in relevant part:

"The general business of every bank shall be transacted at the place of business specified in its certificate of authority, and it shall be unlawful for any bank to establish and operate any branch bank except as hereinafter provided. . . ."

Pertinent rules of statutory construction were summarized in State v. Thompson, 237 Kan. 562 (1985):

"We have stated that the fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute. In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may properly look to the historical background of the enactment. . . ." 237 Kan. at 563.

In addition,

"changes made in a statute are to be considered by the court in determining the legislative intent, and any changes and additions made in existing legislation raise a presumption that a change in meaning and effect was intended.
[Citation omitted]

"It is a fundamental principal of statutory construction that words in

common usage are to be given their natural and ordinary meaning in arriving at the proper construction of a statute. [Citations committed]." Szoboszlay v. Glessner, 233 Kan. 475, 478 (1983).

In applying these rules of construction, we believe that two relevant statements of law may be made: First, an LPO is not a branch bank; secondly, the current version of K.S.A. 9-1111 does not prohibit the establishment of an LPO.

While the terms "general business of banking" and "branch bank" are not legislatively defined for purposes of K.S.A. 1987 Supp. 9-1111, the above-quoted rule of statutory construction instructs us to interpret those terms in light of their common usage and ordinary meaning. An LPO does not fit into the common meaning of a branch bank. The term "branch bank" commonly refers to "an office of a bank physically separated from its main office, with common services and functions, and corporately part of the bank." Blacks Law Dictionary 170, (5th ed. 1979). The term implies more than a singular function, suggesting that the services available at the main office are generally available at the branch. For example, branches established under subsection (e) of K.S.A. 1987 Supp. 9-1111 must provide checking, savings and loan services. K.S.A. 1987 Supp. 9-1111(e) (7). Additionally, though not binding on state statutes regarding state banks, branch banking is defined by federal law at 12 U.S.C. § 36(f) (1986). That definition was refined by the comptroller general in an interpretive ruling to exclude an LPO:

"Origination of loans by employees or agents of a national bank or of a subsidiary corporation at locations other than the main office or branch office of the bank does not violate 12 U.S.C. 36 and 81: Provided, that the loans are approved and made at the main office or a branch office of the bank or at an office of the subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank." 12 C.F.R. § 7.7380(b) (1987).

That ruling was applied in Red Bird Bank of Dallas v. Crocker National Bank, 667 S.W.2d 885 (Tex. App. 1984). The court held that soliciting loan applications,

denying applications which fail to meet pre-established criteria, checking credit of an applicant, and even repossessing collateral upon default of a loan did not constitute branch banking since such activity did not actually constitute lending money. Based on the foregoing, it is our opinion that the legislature did not intend the term "branch banking" to include bank activities such as those conducted in a loan production office.

As an LPO is not a branch bank, we believe that K.S.A. 1987 Supp. 9-1111 does not prohibit the establishment of an LPO. Previously, K.S.A. 9-1111 stated that it was "unlawful for any bank to establish and operate any branch bank, branch office or agency or place of business" except as provided by that section. L. 1984, ch. 48, § 5. Former Attorney General Schneider concluded that this section, along with K.S.A. 9-1715 (Weeks, 1975) prohibited a state bank from establishing an LPO. See Attorney General Opinion No. 78-109 and 78-115 (Schneider).

Both K.S.A. 9-1111 and 9-1715 were amended by L. 1986, ch. 57. Section 8 of chapter 57 removed the reference to branch offices, agencies, and places of business from K.S.A. 9-1111. Applying the rule of construction announced in Szoboszlay, it is presumed that the legislature intended to change the meaning and effect of K.S.A. 9-1111. The intended change appears to be that the prohibitory clause of K.S.A. 1987 Supp. 9-1111 applies only to branch banks, and not other agencies, offices, and places of business.

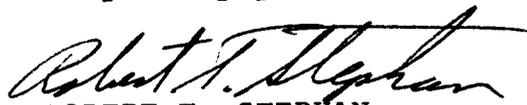
While the prohibition against branch banking does not encompass the establishment of an LPO, we still must reckon with the provision that the general business of banking must be transacted at the place of business specified in the certificate of authority. Similar language in 12 U.S.C. § 81 (1986) was discussed in Clarke v. Securities Industry Assn., U.S. _____, 107 S.Ct. 750, 760, 93 L.Ed.2d 757, 772 (1987). In that case, the Court stated that the phrase "general business of each national banking association" plausibly refers only to core banking functions. See also, Dept. of Banking and Consumer Finance v. Clarke, 809 F.2d 266, 268 (5th Cir. 1987) (banking business generally is receiving deposits, making commercial loans, and negotiating checks and drafts). It appears that as a general rule, core banking functions must be conducted at the bank's place of business as specified in its certificate of authority, subject to enumerated exceptions scattered throughout the banking code. Examples of exceptions include:

branch banks, K.S.A. 1987 Supp. 9-1111; remote service units (which are not branch banks), K.S.A. 1987 Supp. 9-1111(g); certain bank service corporation activities allowed by regulations promulgated pursuant to the federal bank holding act, section 4(c)(8), [codified at 12 U.S.C. § 1843(c)(8)(1986), implemented by Regulation Y, 12 C.F.R. Part 225.1 (1987)], K.S.A. 1987 Supp. 9-1127b; and those activities which the bank commissioner allows pursuant to K.S.A. 1987 Supp. 9-1715.

K.S.A. 1987 Supp. 9-1715 allows state banks, with the commissioner's approval, to engage in activities in which they would be authorized to engage if they were federally chartered. A limitation of the commissioner's discretion appears at subsection (d), which states that the commissioner may not authorize the establishment of a branch bank except as provided in K.S.A. 1987 Supp. 9-1111. As previously noted, L. 1986, ch. 57, sec. 11 amended K.S.A. 9-1715(d) (Ensley, 1982) by deleting the reference to agencies, branch offices, and places of business, and thus LPO's are not included in this limitation.

In conclusion, it is our opinion that, while the general business of the bank must be transacted at the place of business specified on its certificate of authority, the commissioner may, in accordance with K.S.A. 1987 Supp. 9-1715, allow a bank to engage in an activity in which the bank could engage if it were a federally chartered bank. As national banks may establish an LPO without violating branch banking statutes, the commissioner could allow the same for state banks. To the extent that the relevant statutes have been amended, Attorney General Opinions No. 78-109 and 78-115 are superseded.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mark W. Stafford
Assistant Attorney General