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ATTORNEY GENERAL OPINION NO. 88-66

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

Re: Banks and Banking -- Banking Code; Powers -- Limitation on Loans; Limited Partnerships

Synopsis: To ensure good banking practices, the banking code establishes limitations on lending to any one person, copartnership, association or corporation. No distinction is made between limited and general partnerships. In determining the limitation of liability to a bank of a limited or general partnership, the bank must consider the total liability of the partnership to the bank, plus the liability of the partner having the greatest debt to the bank in comparison to the other members. Cited herein: K.S.A. 1987 Supp. 9-1104, 56-1a101(g).

* * *

Dear Commissioner Male:

As Banking Commissioner, you request our opinion concerning limitations on loans to limited partnerships. Specifically, you ask whether the amount to which a limited partner is obligated to the partnership should be considered in

determining the maximum liability which may be incurred by the limited partnership.

The purpose of loan limitations established by K.S.A. 1987 Supp. 9-1104 is to regulate banks by enforcing good banking practices. National Farmers Organization v. Kinsley Bank, 731 F.2d 1464, 1467 (10th Cir. 1984) (federal jurisdiction by diversity, construing K.S.A. 9-1104, holding bank not excused from liability to borrower for promising loan in excess of limitation). See also, 7 Michie, Banks and Banking §187 (1980) (regarding similar provisions of federal code regulating national banks) and Anderson v. Akers, 7 F.Supp. 924, 942 (D.C., Ky. 1934) (lending limit in federal code intended to prevent national banks from "putting too many eggs in one basket"). The bank commissioner may order a bank to cease carrying a loan in excess of the limitation, and failure to comply with the order is grounds for removing an officer or director. K.S.A. 1987 Supp. 9-1104(d).

The formula for establishing lending limitations appears in K.S.A. 1987 Supp. 9-1104, which states in relevant part:

> "The total liability to any bank of any person, copartnership, association or corporation, including in the liability of a copartnership or association the greatest of the individual liabilities of the respective members thereof, and including in the liability of a member of a copartnership or association the liability of the copartnership or association, shall not at any time exceed 15% of the amount of the capital stock paid in and unimpaired and the unimpaired surplus fund of such bank. . . ." K.S.A. 1987 Supp. 9-1104(a).

This rule is subject to several variations not relevant to your inquiry.

Regarding partnerships, a three-step analysis is required. Initially, it must be determined whether the copartnership itself has liabilities to the bank in excess of the lending limit. Secondly, the individual members' liability to the bank, separate from that of the copartnership, is examined. Finally, if neither of the above categories of liability

exceed the lending limit, then the liability to the bank of the individual member having the greatest liability in comparison with other members is added to the liability of the copartnership. The resulting liability of the third inquiry must also be below the lending limit.

You ask whether, in making the third determination for a limited partnership, (a) the total debt of the entity is added to the greatest individual liability, or (b) whether only the amount to which a member's obligation to the entity is limited by the partnership agreement is added to the greatest individual liability. To illustrate the distinction between (a) and (b), assume the following: Ltd. is a limited partnership with liabilities to Bank of $100,000. Partner, a limited partner of Ltd., is limited to a $50,000 contribution obligation to Ltd. pursuant to the partnership agreement, and has a personal debt to Bank of $60,000. The lending limit of Bank is $150,000. In this illustration, the first two inquiries reveal that neither Ltd. or Partner have liabilities exceeding the lending limit of Bank. Using option (a) of the third inquiry, Partner's personal debt of $60,000 would be added to Ltd.'s liability of $100,000, resulting in an excess of $10,000 over Bank's lending limit. Using option (b), Partner's personal debt of $60,000 would be added to the $50,000 limit of liability per the partnership agreement, resulting in an amount less then Bank's lending limit. You state that if Partner were a general partner, option (b) would not be used.

Whatever benefits may be derived from differentiating between limited and general partnerships in applying K.S.A. 1987 Supp. 9-1104(a), we believe that the distinction involves a legislative choice which has not been made. The statute refers to copartnerships without distinguishing between limited and general partnerships. A limited partnership is a form of partnership having one or more general partners and one or more limited partners. See, e.g. K.S.A. 1987 Supp. 56-1a101(g). A limited partnership is therefor a copartnership within the meaning of K.S.A. 1987 Supp. 9-1104(a).

In conclusion, it is our opinion that the lending limitations in the banking code are intended to ensure good banking practices. The statute makes no distinction between limited and general partnerships. In determining the limitation on liability to a bank for a limited or general partnership, the

bank must consider the total liability of the limited partnership to the bank, plus the liability of the partner having the greatest liability to the bank in comparison to the other members.

Very truly yours,

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