



STATE OF KANSAS

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November 22, 1988

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ATTORNEY GENERAL OPINION NO. 88-163

John McNish
Dickinson County Attorney
Dickinson County Courthouse
325 Broadway
Abilene, Kansas 67410

Re: Banks and Banking--Banking Code; Dissolution;
Insolvency--Receiver to Take Charge of Assets;
Order of Payment

Synopsis: The federal deposit insurance corporation, when acting as receiver of an insolvent state bank, is to discharge the liabilities of the bank according to the statutorily prescribed order of priority. Real and personal property taxes regularly assessed against the bank are given priority pursuant to K.S.A. 1987 Supp. 9-1906, as amended by L. 1988, ch. 63, §1(b). Cited herein: K.S.A. 1987 Supp. 9-1906, as amended by L. 1987, ch. 63, §1; K.S.A. 9-1907; 12 U.S.C.A. §1821(e) (West 1980).

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Dear Mr. McNish:

As Dickinson County Attorney, you request our opinion regarding the responsibility for payment of real estate taxes assessed against a failed state bank when the federal deposit insurance corporation (FDIC) has been appointed as receiver. Specifically you inquire whether real estate taxes prior to tax sale have any priority enabling the county to collect such taxes from the FDIC.

Pursuant to K.S.A. 9-1907 and 12 U.S.C.A. §1821(e) (West 1980), the FDIC is empowered to act as receiver of any insolvent state bank, the deposits in which are insured to any extent by the FDIC, once that bank has been closed. In accepting the appointment to serve as receiver, the FDIC assumes all the powers and privileges as well as "all the duties and requirements provided by the laws of this state with respect to a state receiver. . . ." K.S.A. 9-1907. See also FDIC v. Bank of America, 701 F.2d 831, 834 (9th Cir. 1983), cert. denied 464 U.S. 935, 104 S.Ct. 343, 78 L.Ed.2d 310 (1983); FDIC v. Sumner Fin. Corp., 602 F.2d 670 (5th Cir. 1979).

K.S.A. 1987 Supp. 9-1906 requires the receiver of a failed state bank to take charge of the bank, together with its assets, "and liquidate the affairs and business thereof for the benefit of its depositors, creditors and stockholders." The statute then sets forth the order of priority of payment of the bank's liabilities. This provision was amended in 1988 to read as follows:

"(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 and real and personal property taxes assessed against the bank pursuant to applicable law;

"(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,

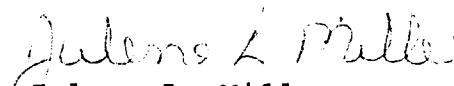
in the absence of such applicable law, pro rata." K.S.A. 1987 Supp. 9-1906, as amended by L. 1988, ch. 63, §1. (Emphasis indicates new language.)

We believe the amendment was made to resolve just the problem you describe. Prior to the amendment it was unclear whether taxes which had not yet become a lien on property were given any priority in the discharge of liabilities under K.S.A. 1987 Supp. 9-1906(b). With the amendment it is clear that taxes which have been assessed do have priority regardless whether a lien has attached.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm