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March 25, 1980

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ATTORNEY GENERAL OPINION NO. 80- 80

Robert Elliott
Consumer Credit Commissioner
535 Kansas Avenue
Topeka, Kansas 66612

Re: Consumer Credit Code--Definitions--
"Supervised Financial Organization"

Synopsis: In order to qualify as a "supervised financial organization" under the Uniform Consumer Credit Code, an organization must satisfy the definitional requirements of K.S.A. 16a-1-301(38) (as amended by section 4 of 1980 Senate Bill No. 731), including the requirement that such organization be capable of accepting deposits of money. Service corporations of state or national banks or of state or federal savings and loan associations do not have specific statutory or regulatory authority to accept deposits and, therefore, do not qualify as "supervised financial organizations," although regulations applicable to state and federal savings and loan associations appear to contemplate that such authority could be granted by the appropriate regulatory authority upon specific application therefor. Statutes cited or construed herein: K.S.A. 9-1112, 9-1123, 9-1126, 16a-1-301(2), (38), (39), (40) (as amended by section 4 of 1980 Senate Bill No. 731), 16a-2-301, 16a-6-103 and 17-5501(k) and K.S.A. 1979 Supp. 16a-2-302 and 12 U.S.C.A. §§1464, 1861 and 1864.

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Dear Mr. Elliott:

We are in receipt of an opinion request from your office, inquiring as to whether a service corporation of a state or federal savings and loan association, or of a state or national bank is a "supervised financial organization" as defined by K.S.A. 16a-1-301(38). The question presented is important from the standpoint that, without being licensed by the Consumer Credit Commissioner to make supervised loans, an organization must be able to qualify as a "supervised financial organization" in order to make supervised loans, i.e., loans charging more than 12% interest. See K.S.A. 16a-1-301(40) and 16a-2-301.

Initially, it should be noted that K.S.A. 16a-1-301 has been amended by section 4 of 1980 Senate Bill No. 731. However, the provisions thereof that are relevant to our consideration were unaffected by this amendment. With this explanation, it is pertinent to note that K.S.A. 16a-1-301(38) defines a "supervised financial organization" as a

"person, other than an insurance company or other organization primarily engaged in an insurance business

"(a) authorized, chartered, or holding an authorization certificate under the laws of this state or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and

"(b) subject to supervision by an official or agency of this state or of the United States." (Emphasis added.)

The policy behind these requirements is apparently founded in a belief that organizations wishing to make supervised loans must be monitored so as to adequately safeguard the consuming public from possible UCCC violations. However, the statute goes beyond the requirement that an organization be "subject to supervision." Before an organization can qualify as a "supervised financial organization," it also must be: (1) organized, chartered, or holding an authorization certificate under the laws of this state or of the United States; (2) capable of making loans; and finally, (3) capable of receiving deposits.

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We interpret the requirements contained within the statute as being conjunctive and, as such, all such requirements must be satisfied before an organization can qualify as a "supervised financial organization."

It is with these requirements in mind that we have examined each of the various types of service corporations being considered. As a result of such examination, we believe that the controlling element common to all such service corporations is the ability to accept deposits. If a financial institution's service corporation cannot accept deposits, then it cannot qualify as a "supervised financial organization," regardless whether the other definitional requirements of 16a-1-301(38) are satisfied.

With respect to state banks, K.S.A. 9-1126 provides: "No bank service corporation may engage in any activity other than the performance of bank services for banks." K.S.A. 9-1123 contains a definition of "bank services." Absent from the list of permissible activities within the definition of "bank services" is the capability to "receive deposits" and thus a service corporation for a state bank is statutorily precluded from such activity. Further, K.S.A. 9-1112 precludes the investment of a bank's funds in the stock of any other bank or corporation, except as provided by statute. Thus, K.S.A. 9-1123 et seq. provide the sole mechanism by which a service corporation may be utilized by a state bank. Since the service corporation is legally incapable of receiving deposits, it becomes apparent that a service corporation of a state bank could not qualify as a "supervised financial organization" under K.S.A. 16a-1-301(38).

In the case of a state savings and loan association, K.S.A. 17-5501(k) places within the discretion of the Kansas Savings and Loan Commissioner the ability to permit such an institution to own corporate securities, i.e., purchase of stock in a subsidiary service corporation. However, before approval is given, the parent savings and loan association must sign an agreement whereby the authorized activities of the service corporation are specifically outlined (copies of the approval form used are available from the Commissioner's office). A review of these authorized activities reveals that nowhere is there contained an authorization to receive deposits. It is important to note, however, that the Commissioner under paragraph (L) of the agreement has the discretionary ability to authorize "other activities." Presumably, this contractual provision could be utilized to authorize the receipt of deposits and thus satisfy the requirements of K.S.A. 16a-301-1(38).

However, it is our understanding from communications with the Commissioner that the approval to receive deposits has not been given in the past, nor will such approval be given in the future.

Therefore, since the approval to receive deposits is not present, a service corporation of a state savings and loan association is precluded from doing so, and as such, such service corporation cannot qualify as a "supervised financial organization" in that it is lacking one of the prerequisite qualifications. This is not to say that if said approval to receive deposits is granted in the future that a service corporation that satisfies the other prerequisites could not qualify as a "supervised financial organization."

With respect to federal savings and loan associations, the pertinent statutory provision is 12 U.S.C.A. §1464(c)(4)(B), which authorizes such association to make

"[i]nvestments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the home office of the association is located, if the entire capital stock of such corporation is available for purchase only by savings and loan associations of that State and by Federal associations having their home offices therein, but no association may make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 per centum of the assets of the association."

Regulations of the Federal Home Loan Bank Board prescribe specific limitations on the activities of a federal association's subsidiary service corporation. Pursuant to 12 C.F.R. §545.9-1, a federal association is permitted to "invest in the capital stock, obligations, or other securities of any service corporation organized under the laws of the state, district, commonwealth, territory, or possession in which the home office of such association is located," if, as provided in subsection (a)(4) thereof, "[s]ubstantially all of the activities of such service corporation, performed directly or through one or more wholly-owned subsidiaries or joint

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ventures, consist of one or more" of the activities listed in that subsection. The activities so listed are confined to the types of loans and investments which may be made by service corporations. No authority is provided therein for accepting deposits, although paragraph (xiv) of this subsection permits a service corporation to engage in "[s]uch other activities reasonably related to the activities of Federal savings and loan associations as the Board may approve on application therefor by any such service corporation or otherwise."

From the foregoing, we have concluded that, unless specific authorization to accept deposits has been granted by the Federal Home Loan Bank Board to the service corporation of a federal savings and loan association, such service corporation is not authorized to accept deposits and, therefore, does not meet the definitional test prescribed in 16a-1-301(38) for being a "supervised financial organization" for purposes of the UCCC. In reaching such conclusion, we are not unmindful of the fact that such service corporations are, pursuant to 12 C.F.R. §545.9-1(d), "supervised" in the respect that they are subject to examination by the Federal Home Loan Bank Board. However, "supervision" is but one element that must be present to qualify as a "supervised financial organization." It does not in and of itself establish such qualification.

Our conclusion also has been obtained with knowledge that 12 C.F.R. §545.9-1(a)(4)(i)(e) authorizes service corporations of federal savings and loan associations to make "consumer loans." However, neither this provision nor any other federal law or regulation of which we are aware constitutes a preemptive provision of federal law that would negate the definitional requirements of 16a-1-301(38). The mere fact that such service corporation is authorized to make such loans, even coupled with the fact of its supervision, as noted above, would not constitute such service corporation a "supervised financial organization," such that it is entitled to be a "supervised lender" under the UCCC without the necessity of obtaining a license therefor from the Consumer Credit Commissioner. See K.S.A. 16a-1-301(2), (39), as amended, K.S.A. 16a-2-301 and 16a-6-103 and K.S.A. 1979 Supp. 16a-2-302.

Finally, as concerns subsidiary service corporations of federally chartered banks, we have reached a similar conclusion. 12 U.S.C.A. §1864 provides: "No bank service corporation may engage in any activity other than the performance of bank services for banks." The term "bank services," as used therein, is defined by 12 U.S.C.A. §1861 as meaning

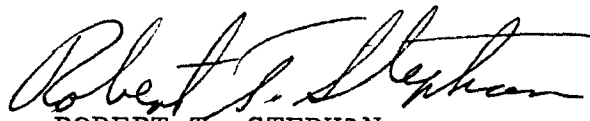
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"services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank."

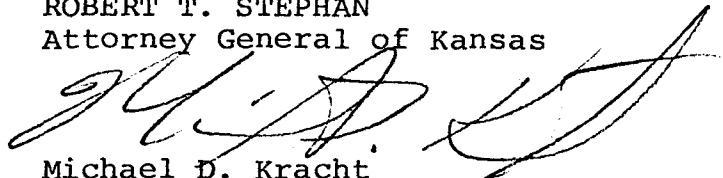
Based on these statutory provisions, it is our opinion that a bank service corporation is not a "supervised financial organization" within the meaning of the UCCC. We have discovered no federal law or regulation which specifically authorizes a national bank's service corporation to do those things required of a "supervised financial organization," and it is apparent from the provisions quoted above that such service corporation is not authorized to engage in the business of banking. Rather, such service corporation is limited to providing business services to banks. As such, it is neither authorized to make loans nor to accept deposits, and absent such capabilities, it does not qualify as a "supervised financial organization."

In summary, it is our opinion that the service corporations of state and national banks or of state and federal savings and loan associations do not qualify as "supervised financial organizations," as defined by K.S.A. 16a-1-301(38), as amended. None of them are specifically authorized by applicable laws and regulations to accept deposits, which is an essential attribute of a supervised financial organization. Although regulations applicable to state corporations of state and federal savings and loan associations appear to contemplate that such authority could be granted by the appropriate regulatory authority upon specific application therefor, we have not been advised as to any such authority being granted to any state or federal savings and loan association's service corporation.

Very truly yours,



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Attorney General of Kansas



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RTS:WRA:MDK:gk