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June 29, 1983

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ATTORNEY GENERAL OPINION NO. 83- 97

The Honorable Harold P. Dyck
State Representative
Ninety-Ninth District
P. O. Box 597
Hesston, Kansas 67062

Re: Corporations -- Savings and Loan Code -- Associations Subject to Code; Savings Banks

Synopsis: The Garn-St. Germain Depository Institutions Act, Public Law 97-320, amends the Homeowner's Loan Act of 1933 [12 U.S.C. 1464(i)] to allow federally-chartered savings and loan associations to convert to federally-chartered savings banks. Such savings banks are subject to the rules and regulations of the Federal Home Loan Bank Board, which allow regulated financial institutions to have intrastate branches with some restrictions. Accordingly, a federally-chartered savings bank may have branches in this state without being in violation of K.S.A. 9-1111, which is a part of the State Banking Code and so is inapplicable to savings banks chartered by the FHLBB. Cited herein: K.S.A. 9-701, 9-702, 17-5102, 17-5530, 17-5805, L. 1868, ch. 23, L. 1891, ch. 43, L. 1943, ch. 133, L. 1947, ch. 102, P.L. 95-630, P.L. 97-320, 12 U.S.C. §§ 36, 1462, 1464, 1726, 1847, 12 C.F.R. §545.14.

* * *

Dear Representative Dyck:

As Chairman of the Commercial and Financial Institutions Committee of the Kansas House of Representatives, you request our opinion concerning the effect in Kansas of one section of the Garn-St. Germain Depository Institutions Act of 1982, Public Law 97-320. Specifically, you inquire whether Section 313 of the Act, which amends Section 5(i) of the Homeowner's

Loan Act (HOLA) [12 U.S.C. §1464(i)], so as to allow federally-chartered savings and loan associations to convert to savings banks, and visa versa, has the effect of authorizing branch banking in this state. Such activity by banks is prohibited by K.S.A. 9-1111 in all but a few enumerated situations, although permitted by K.S.A. 17-5102, which governs savings and loan associations.

Prior to discussing the changes made by the Garn-St. Germain legislation, a brief examination of the concept and history of savings banks is appropriate. State chartered savings banks have existed in a few states since the 19th century. Such early savings banks were mutual associations chartered to encourage home ownership and, depending on state law, enjoyed many powers granted to commercial banks. In 1868, the Kansas Legislature approved a savings bank code which allowed five or more persons to organize a savings association to receive deposits and lend money on real estate and personal security. L. 1868, ch. 23, §127. Sections of this law were included in or replaced by the building and loan code (L. 1869, ch. 5) and the first state bank code (L. 1891, ch. 43). The building and loan code was replaced by a savings and loan code in 1943 (L. 1943, ch. 133), which remains in effect today, while the present bank code dates from 1947 (L. 1947, ch. 102). In neither is there any express authorization for the creation or operation of a savings bank in Kansas.

As presently in effect, the state bank code, K.S.A. 9-701 et seq., applies to the following:

> "Any individual, firm or corporation, except a national bank, who shall receive money on deposit, whether on certificates or subject to check, or any individual, firm or corporation, except railroad, transoceanic steamship, air transport, telegraph or Morris plan companies, or building and savings and loan associations, or national banks, or express companies engaged in an international financial and travel business or credit unions, which shall receive money for which it issues its check, draft, bill of exchange, or other evidence of indebtedness for which it charges a fee, shall be considered as doing a banking business . . . ." (K.S.A. 9-702) (Emphasis added.)

One of the excluded terms, savings and loan associations, is broadly defined by the savings and loan code to include:

> "All persons accepting moneys from the public and engaged in home financing, whether or not incorporated and every corporation heretofore incorporated under the statutes of this state which has for its purpose the promotion of thrift and the financing of homes by whatever name known . . . ." (K.S.A. 17-5805)

From the above, it is apparent that reference to federal law must be had with regard to savings banks, in that state statutes are silent.

Initially, it should be noted that the presence of federal regulation, whether of banks or savings and loan associations, removes the affected institution from the control of the state. K.S.A. 9-701, 17-5530. The state courts have long recognized that federally-regulated institutions are not subject to state regulation. Stout v. Lusk, 9 Kan.App. 694 (1900). Only because of Congressional action are the states able to regulate national banks in the areas of holding companies (12 U.S.C. §1847) and branching (12 U.S.C. §36). Federally-regulated savings associations are supervised by the Federal Home Loan Bank Board (FHLBB), with there being no limit to the Board's authority. Fidelity Federal Savings and Loan Ass'n v. de la Cuesta, --- U.S. ---, 73 L.Ed.2d 664 (1982). This authority includes the area of branching. North Arlington National Bank v. Kearney Federal Savings, 187 F.2d 564 (3rd Cir. 1951). At present, federally-regulated associations are allowed to have intra-state branch locations, subject to the requirements of 12 C.F.R. 545.14.

In 1978, the Homeowner's Loan Act was amended (P.L. 95-630) to authorize federally-chartered mutual savings banks. Section 1201 of the law (92 Stat. 3710) amended 12 U.S.C. §1462 to broaden the term "association" to include such entities along with federal savings and loan associations. Section 1202 amended 12 U.S.C. §1464(a)(1) to allow state mutual savings banks to convert to a federal charter, provided such conversion was not in violation of the state law. In that this was the only way a federally-chartered mutual savings bank could be created, the 1978 amendments had no effect in Kansas, since no savings banks existed in this state. Such federally-chartered organizations were also limited to establishing branches according to the law of the state governing savings banks, with two exceptions (no limit on number of branches; establishment of branches within thirty-five miles of home office, state law notwithstanding).

The 1982 amendments contained in the Garn-St. Germain act further enlarged the concept of federally-chartered savings banks in a variety of ways. Section 311 (96 Stat. 1496) amended

12 U.S.C. §1464(a) to eliminate the restrictions on conversion by a state mutual savings bank, as well as removing other limitations on the activities of savings banks with federal charters. In an express attempt to provide for greater flexibility in the area of thrift institutions, the section was amended to read as follows:

> "In order to provide thrift institutions for the deposit or investment of funds and for the extension of credit for homes and other goods and services, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings and loan associations, or Federal savings banks, and to issue charters therefor, giving primary consideration to the best practices of thrift institutions in the United States. The lending and investment authorities are conferred by this section to provide such institutions the flexibility necessary to maintain their role of providing credit for housing."

Another change made by the Garn-St. Germain legislation has the effect of insuring federal savings banks by the Federal Savings and Loan Insurance Corporation (FSLIC). P.L. 97-320, §115(a), 96 Stat. 1475, amending 12 U.S.C. §1726(a). Previously, savings banks were insured by the Federal Deposit Insurance Corporation (FDIC), which continues to insure federally-chartered banks.

It is in the area of conversion, however, that the 1982 act makes changes which are of crucial importance to this inquiry. In place of the limited powers granted by the 1978 amendments (cited above), Section 313 of the act (96 Stat. 1497) amends 12 U.S.C. §1464(i) to allow the following types of conversations:

> "(1) Any institution which is, or is eligible to become, a member of a Federal home loan bank may convert itself into a Federal savings and loan association or Federal savings bank under this chapter (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form), but such conversion shall be subject to such rules and regulations as the Board shall prescribe, and thereafter the converted association shall be entitled to all the benefits of

> this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this chapter.
>
> "(2) Subject to the rules and regulations of the Board, any Federal association may convert itself from the mutual form to the stock form of organization, or from the stock form to the mutual form, and any Federal association may change its designation from a Federal savings and loan association to a Federal savings bank, or the reverse.
>
> "(3)(A) Any Federal association may convert itself into a savings and loan or savings bank type of institution organized pursuant to the laws of the State, district, commonwealth, or territory (hereinafter referred to in this section as the 'State') in which the principal office of such Federal association is located . . . ." (Emphasis added.)

In our opinion, should a federal savings and loan association located in Kansas wish to change its designation to a savings bank pursuant to subsection (2) of 12 U.S.C. §1464(i), the effect would be just that -- one of a name change, and no more. Jurisdiction over the institution would be retained by the FHLBB, the same regulations would apply, and the same concepts of federal preemption over state statutes would continue to hold true for the new association as for its predecessor.

The intent of the Garn-St. Germain legislation is to grant increased flexibility to associations regulated by the FHLBB, and not to reorganize the entire framework of federally-chartered financial institutions. Further evidence of this is found in regulations now being proposed by the Board which would create a unified charter and by-laws format for both savings and loans and savings banks, thus allowing each to do all of the activities formerly done by the other. In short, there is very little distinction left between the two, and the presence of the word "bank" in the phrase "savings bank" is no longer an indication of what the entity is or what it can do. Accordingly, any question regarding branching by a savings bank created by a 12 U.S.C. §1464(i)(2) conversion is governed by the regulations of the FHLBB, which allow branching in most cases, and not 12 U.S.C. §36, which allows the prohibition contained in the state bank code (at K.S.A. 9-1111) to govern even national banks.

In conclusion, the Garn-St. Germain Depository Institutions Act, Public Law 97-320, amends the Homeowner's Loan Act of 1933 [12 U.S.C. 1464()] to allow federally-chartered savings and loan associations to convert to federally-chartered savings banks. Such savings banks are subject to the rules and regulations of the Federal Home Loan Bank Board, which allow regulated financial institutions to have intra-state branches with some restrictions. Accordingly, a federally-chartered savings bank may have branches in this state without being in violation of K.S.A. 9-1111, which is a part of the State Banking Code and so is inapplicable to savings banks chartered by the FHLBB.

Very truly yours,

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