



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

June 26, 1984

ATTORNEY GENERAL OPINION NO. 84- 58

Eugene C. Hegarty
Bank Commissioner
700 Jackson, Suite 300
Topeka, Kansas 66603

Re: Corporations -- Trust Companies -- Change of Location;
Capitalization Requirements

Synopsis: Pursuant to K.S.A. 17-2025, the provisions of K.S.A. 17-2021 et seq. do not apply to trust companies which were organized and doing business in Kansas prior to the effective date of the act (June 29, 1957). However, a trust company which transfers its place of business from one city to another must comply with the requirements of K.S.A. 17-2021, which establish capitalization limits based on the size of the city. This section by its specific wording applies to any trust company which makes a change of location, and so is an exception to the general rule established by K.S.A. 17-2025. Cited herein: K.S.A. 17-2017, 17-2021, 17-2025.

* * *

Dear Commissioner Hegarty:

As Bank Commissioner for the State of Kansas, you request our opinion on a question concerning the capitalization requirements for a trust company which has recently changed its place of business. Specifically, you inquire whether the requirements of K.S.A. 17-2021 apply to a trust company which has been in business prior to 1957, given the general language of 17-2025 which makes the provisions of the act (L. 1957, ch. 151) applicable only to companies organized after June 29, 1957.

You inform us that the company in question, Colonial Trust Company, has moved its place of business from Abilene to Overland Park, Kansas. This move was the subject of a prior opinion of this office, No. 83-141, which dealt with the need for approval of the Kansas State Banking Board of the change in location. In that the company had ceased to accept deposits and had in fact closed out all existing accounts prior to the move, it was our conclusion that approval of the state banking board pursuant to K.S.A. 17-2015 was not required. The move was effective February 19, 1983, and took the company from Abilene, a town of approximately 6,600 residents, to Overland Park, which has approximately 85,000.

The subject of your current inquiry is K.S.A. 17-2021, which states as follows:

"The common capital stock of any new trust company hereinafter organized shall be:

"(1) One hundred thousand dollars (\$100,000) in unincorporated towns and cities having a population of three thousand (3,000) persons or less;

"(2) one hundred twenty-five thousand dollars (\$125,000) in cities having a population of more than three thousand (3,000) and not more than ten thousand (10,000) persons;

"(3) one hundred seventy-five thousand dollars (\$175,000) in cities having a population of more than the thousand (10,000) and not more than fifty thousand (50,000) persons;

"(4) two hundred fifty thousand dollars (\$250,000) in cities having more than fifty thousand (50,000) persons; all as ascertained by the latest state or federal census.

"In addition to the aforesaid common capital stock each new trust company shall have a paid-in surplus of twenty percent (20%) of its common capital stock, and also a paid-in undivided profit of five percent (5%) of its common capital stock. No trust company hereafter shall reduce voluntarily its common capital stock, surplus and undivided profits below the amount required by this section. Any trust company which transfers its place of business from one city to another shall comply with the provisions of this section." (Emphasis added.)

From the terms of the statute, it is clear that its application to this situation would have definite effects on the trust company, in that the required capitalization in a city like Overland Park is twice that of a city such as Abilene (\$250,000 to \$125,000).

It has been argued that the above statute does not apply to trust companies such as Colonial, which existed prior to the effective date of the 1957 act. Such an argument is based upon K.S.A. 17-2025, which states that the act (17-2015 et seq.) "shall not be deemed to apply to trust companies organized and now engaged in business in the state of Kansas." However such general language may be applied in other respects, in our opinion it cannot be found to take precedence over the specific language of K.S.A. 17-2021, which makes it clear that any trust company which changes the location of its place of business will be subject to the capitalization limits. In the absence of the last sentence to K.S.A. 17-2021 (underscored above), it would be a correct construction to apply the statute only to those trust companies organized after June 29, 1957. With the inclusion of this language, however, the result must be different, if effect is to be given to all parts of the act. Wirt v. Esrey, 233 Kan. 136 (1983).

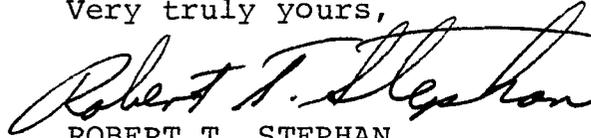
As you note, a contrary construction would allow a trust company to incorporate in a small city and then move to a larger city without meeting capital requirements which have been established to insure the safety of depositors' funds. In view of the express language of K.S.A. 17-2021, we are not prepared to so conclude. Accordingly, it is our opinion that Colonial Trust Company, even though in existence prior to June 29, 1957, is subject to the capitalization requirements of K.S.A. 17-2021, and with a place of business in Overland Park, Kansas, must therefore have \$250,000 in common capital stock. A failure to do so would leave the company in violation of K.S.A. 17-2017, which provides that no corporation shall engage in the business of a trust company without complying with all of the provisions of "this act." While the latter statute is contained in an earlier act than is K.S.A. 17-2021, both deal with requirements for trust companies and so should be read in pari materia, even though enacted a different times. Claflin v. Walsh, 212 Kan. 1 (1973).

In conclusion, pursuant to K.S.A. 17-2025, the provisions of K.S.A. 17-2021 et seq. do not apply to trust companies which were organized and doing business in Kansas prior to the effective date of the act (June 29, 1957). However, a trust company which transfers its place of business from one city to another must comply with the requirements of K.S.A. 17-2021, which establish capitalization limits based on the size of

Eugene C. Hegarty
Page Four

the city. This section by its specific wording applies to any trust company which makes a change of location, and so is an exception to the general rule established by K.S.A. 17-2025.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw