



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

May 2, 1986

ATTORNEY GENERAL OPINION NO. 86- 66

Marvin S. Steinert
Commissioner
Savings and Loan Department
503 Kansas Avenue, Room 220
Topeka, Kansas 66603

Re: Corporations -- Savings and Loan; Miscellaneous --
Effect of Repeal of K.S.A. 17-5815 Upon Claimants
of an Insolvent Savings and Loan Association

Synopsis: Since K.S.A. 17-5815 was repealed in 1983, before
any distributions were made to any of the priority
3 or 4 claimants the statute had spoken to, K.S.A.
17-5815, as repealed, is construed neither
prospectively nor retrospectively in this fact
situation. In absence of any state law on this
point, federal law dictates priority status to all
category 3 and 4 claimants of this insolvent
savings and loan association in receivership.
Cited herein: K.S.A. 17-5815, as repealed by L.
1983, ch. 86, §5; 17-5824; 12 C.F.R. 569a.7(a)(1)
through (4); 1983 Senate Bill No. 55.

* * *

Dear Commissioner Steinert:

As Savings and Loan Commissioner for the State of Kansas, you
request our opinion on a question concerning the effect of
K.S.A. 17-5815, and its 1983 repeal, upon general unsecured
creditors and savings and checking account depositors and the

F.S.L.I.C. Specifically, you inquire whether the repealed statute should be construed prospectively or retrospectively.

K.S.A. 17-5815 concerned priority of shares and savings deposits upon liquidation, stating:

"Shares of an association and savings deposits of a deposit association will, in the event of voluntary or involuntary liquidation, dissolution or winding up of an association or a deposit association, or in the event of any other situation in which the priority of such savings deposits or shares is in controversy, have, to the extent of their withdrawable value, the same priority as general creditors of the association not having priority over other general creditors of the association." (Emphasis added.)

The Kansas Legislature later enacted K.S.A. 17-5824, effective 1980, which provides in part:

"Every savings and loan association organized and operating under the laws of the state of Kansas shall, on and after June 30, 1980, insure the shares or deposits of each shareholder or depositor of such association with the federal savings and loan insurance corporation or with an insurer approved by the state commissioner of insurance for such purposes as hereinafter provided"

The enactment of K.S.A. 17-5824 rendered K.S.A. 17-5815 surplusage, in that the depositors under K.S.A. 17-5815 were now fully insured and no longer had to "stand in line" with general creditors during a defunct savings and loan receivership. Accordingly, the 1983 Kansas Legislature, with Senate Bill No. 55, repealed K.S.A. 17-5815 in a "clean-up" addendum to the body of the bill itself. A reading of the bill, as well as the minutes of the March 17, 1983 meeting of the House Committee on Commercial and Finance Institutions, reveals no legislative intent or remarks whatsoever pertaining to K.S.A. 17-5815, lending further credence to the surplusage

status of K.S.A. 17-5815 after 1980 and its subsequent 1983 "clean-up."

A statute, in absence of clear legislative expression to the contrary, is presumed to operate prospectively. Ohio Casualty Insurance Company v. State Farm Automobile Insurance Company, 601 F. Supp. 345 (D. Kan. 1985). However, purely procedural statutes which do not affect substantive rights are ordinarily given retrospective application. Tew v. City of Topeka Police and Fire Civil Service Commission, 237 Kan. 96 (1985).

In the instant case, however, neither retrospective nor prospective application of K.S.A. 17-5815 applies. Retrospectively, no distributions were made to priority 3 or 4 claimants before the 1983 repeal of K.S.A. 17-5815 (which statute placed category 3 and 4 claimants on the "same priority"). There is of course no prospective application of a repealed statute, especially when no substantive rights have vested in any affected parties.

No money was distributed to priority 3 or 4 claimants prior to repeal of the state statute that prioritized their status. Money distributions first occurred in 1985, when applicable law placed priority 3 claimants ahead of priority 4 claimants. Whether any moneys had been distributed to priority 1 or 2 claimants is irrelevant, as K.S.A. 17-5815 addressed only priority 3 and 4 claimants.

To analogize, the "bowl of spaghetti" never reached the end of the table that claimants 3 and 4 were seated at before their chairs were moved. Had claimants 3 or 4 had one "forkful of money" when they were of the "same priority" per K.S.A. 17-5815, their status would have been substantively vested, and "same priority" would have dictated their shares of monetary distribution. However, their "chairs" were moved from "side-by-side" to "claimant 3 seated before claimant 4" by the time the money was distributed to them in 1985. Claimant 3 now "dishes up" at 100 cents on the dollar, with claimant 4 getting the remainder of the money, per federal law as outlined below.

Since the applicable state law has been repealed, federal rules dictate claim prioritization as follows:

"(a) Claims against the receivership, except for claims specified in paragraphs (b), (c), and (d) of this section shall have the following order of priority:

"(1) All costs, expenses, and debts of the receivership incurred on or after the date of the appointment of the Receiver;

"(2) All claims of creditors, including contractual claims for interest to the date of payment, to the extent that under the laws of the State in which the principal office of the institution in receivership is located such creditor claims are secured by, or constitute a lien on, assets or property of any kind of the institution in receivership;

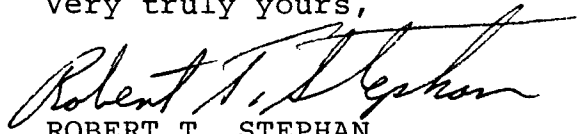
"(3) All claims of general creditors, and the unsecured portion of any creditor obligation under subparagraph (2) of this paragraph, valid as such under the laws of the State in which home office of the institution in receivership is located, including contractual claims for interest to the date of default;

"(4) All claims of holders of checking and savings accounts, and/or the Federal Savings and Loan Insurance Corporation to the extent it has paid insurance to holders of such accounts, which under the laws of the State in which the principal office of the institution in receivership is located are given a priority for liquidation purposes over other classes of such accounts; except that whenever under the laws of the State in which the principal office of the institution in receivership is located such claims are treated on a parity with general creditor obligations upon the liquidation of the institution, such claims will be treated as general creditor obligations under

subparagraph (3) of this paragraph;" 12
C.F.R. 569a 7(a)(1)-(4). (Emphasis added.)

Thus, since K.S.A. 17-5815 was repealed in 1983, before any distributions were made to any of the priority 3 or 4 claimants the statute had spoken to, K.S.A. 17-5815, as repealed, is construed neither prospectively nor retrospectively in this fact situation. In absence of any state law on this point, federal law dictates priority status to all category 3 and 4 claimants of this insolvent savings and loan association in receivership.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General

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