



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- 67

Charles A. Peckham
Rawlins County Attorney
Rawlins County Courthouse
Atwood, Kansas 67730

Re: Banks and Banking -- Banking Code; Dissolution;
Insolvency -- Liability of FDIC for Personal
Property Taxes Owed at Time State Bank Failed

Synopsis: As receiver of a failed state bank, the FDIC is
liable for the personal property taxes that were
due and owing at the time the state bank failed.
Cited herein: K.S.A. 1985 Supp. 9-1906; K.S.A.
9-1907; 11 U.S.C. §503(b)(1)(B); §507(a)(1).

* * *

Dear Mr. Peckham:

As Rawlins County Attorney, you request our opinion on a
question concerning receivership liability. Specifically, you
inquire whether the FDIC, acting as receiver for the failed
Herndon State Bank, is liable for personal property
Rawlins County taxes that were due and owing at the time the
Herndon State Bank failed.

K.S.A. 1985 Supp. 9-1906 states:

"The receiver, under the direction of the
commissioner, shall take charge of any
insolvent bank or trust company and all of
its assets and property, and liquidate the
affairs and business thereof for the
benefit of its depositors, creditors and
stockholders. The receiver may sell or

compound all bad and doubtful debts and sell all the property of the bank or trust company upon such terms as the district court of the county where the bank or trust company is located shall approve. The receiver shall pay over all moneys received to the creditors and depositors of such bank or trust company as ordered by the commissioner.

"(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;

"(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." (Emphasis added.)

K.S.A. 9-1907 authorizes the FDIC to be a receiver, stating:

"The federal deposit insurance corporation or its successor, hereby is authorized and empowered to be and act without bond as receiver or liquidator of any insolvent bank or trust company, the deposits in which are to any extent insured by said corporation, and which bank or trust company shall have been closed. In the event of any such closing of any bank or trust to said insurance corporation the appointment as receiver or liquidator of

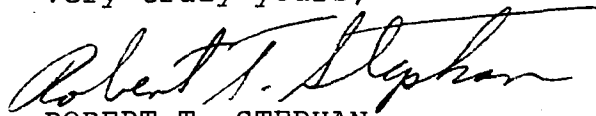
such bank or trust company, and if said insurance corporation accepts said appointment then such insurance corporation shall have and possess all the powers and privileges and shall assume all the duties and requirements provided by the laws of this state with respect to a state receiver or liquidator, respectively, of a bank or trust company, its depositors and other creditors, and shall be subject to the jurisdiction of the district courts and supreme court of Kansas." (Emphasis added.)

Several cases have held that taxes lawfully levied on a bank's intangible property are to be paid out of the assets of the bank as a claim prior to the depositors' and creditors' rights. (See Farmers State Bank of Belden v. Nelson, 218 N.W. 393; see also State v. Ord State Bank, 220 N.W. 265; and State v. American State Bank of Lincoln, 209 N.W. 621, where insolvent state bank's assets were sufficient to pay taxes, but had been paid to depositors, or sold in liquidation, taxes may be ordered paid out of depositors' guaranty fund.)

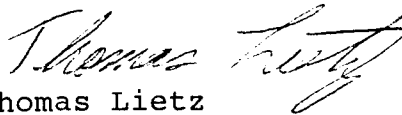
Federal law analogous to K.S.A. 1985 Supp. 9-1906 considers any tax to be an administrative expense (11 U.S.C. §503(b)(1)(B)), and prioritizes administrative expenses on category one level [11 U.S.C. §507(a)(1)], before other creditors.

In conclusion, it is our opinion that personal property taxes due and owing to Rawlins County at the time the Herndon State Bank failed are to be paid by the FDIC. Whether the tax is a claim prior to all other creditors or an administrative expense, FDIC is liable as receiver.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Thomas Lietz
Assistant Attorney General