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
ANTITRUST: 296-5299

December 21, 1987

ATTORNEY GENERAL OPINION NO. 87- 182

The Honorable Rick Bowden
State Representative, Ninety-Third District
433 Walnut
Goddard, Kansas 67052

Re: Banks and Banking--Banking Code; Powers--Corporate Boundaries Limitation

Synopsis: State chartered banking institutions may operate branch facilities only within the limitations of K.S.A. 1986 Supp. 9-1111, as amended. These limitations are not affected by an interpretation of federal law which allows federally chartered banks to branch in the same manner as state chartered savings associations. Cited herein: K.S.A. 1986 Supp. 9-1111, as amended by L. 1987, ch. 53, sec. 1; 12 U.S.C. §36 (1982).

* * *

Dear Representative Bowden:

As Representative for the Ninety-Third District, you have requested our opinion concerning the Kansas banking code. Specifically, you ask whether corporate boundaries are valid limitations on branch banking in light of recent case law.

K.S.A. 1986 Supp. 9-1111, as amended by L. 1987, ch. 53, sec. 1 makes it unlawful for any bank to establish and operate any branch bank except as provided by that section. Branch banks may be established in three ways. First, K.S.A. 1986 Supp. 9-1111(b), as amended authorizes a bank to establish a maximum of three branches. Branch banks

established under subsection (b) are restricted by the specific location requirements of K.S.A. 1986 Supp. 9-1111(d), as amended. A second method for establishing or maintaining a branch is authorized by subsection (e) which addresses merger or consolidation situations. New subsection (j) was added to the statute, which authorizes a third method for creating a branch "in any city located in the same county in which the branch bank is located which city does not have a main bank . . . located within the corporate limits of such city. . . ." K.S.A. 1987 Supp. 9-1111(j), as amended.

Whichever method is used, the state banking board must give its approval based upon a finding that the branch would serve public convenience and need. The decision is subject to reversal only if found arbitrary or capricious . See Michie, 1 Banks and Banking, ch. 2, §28. See, also, Security Bank and Trust Co. v. Schoolfield Bank and Trust Co., 158 S.E.2d 743, 745 (Va. 1968).

In light of the statutory scheme concerning branch banking, you have cited Dept. of Banking and Consumer Finance v. Clarke, 809 F.2d 266, cert. denied, ___ U.S. ____, 97 L.Ed.2d 745 (1987), and question whether the limitations on branching by state chartered banks are now invalid. In Clarke, a national bank sought permission from the comptroller of the currency to open a branch bank in the state of Mississippi. Conditions under which a national bank may establish a branch are determined by reference to the state law in which the branch bank is to be established. 12 U.S.C. §36(c) (1982). The court upheld the comptroller's determination that the federally chartered bank could establish a branch facility in the same manner as could a state chartered savings association. The Comptroller defined state savings and loan associations as state banks within the meaning of 12 U.S.C. §36(h) (1982). The Comptroller used a functional analysis to determine that, in general, savings associations and banks were engaged in the same business. Thus savings institutions engaged in the business of banking are state banks within the meaning of the federal law. Savings institutions could branch anywhere in the state pursuant to state law. The Comptroller therefore determined that federally chartered savings associations and federally chartered banks would operate branch facilities anywhere a state savings and loan association could branch. 809 F.2d at 268-69.

We are not required to opine on the logic of the comptroller's decision to determine that Clarke does not affect the

boundary limitations on branching as they apply to state chartered banks in Kansas. It is well established that statutes are presumed constitutional. In State v. Greenlee, 228 Kan. 712 (1980), the court stated,

> "A statute is presumed to be constitutional. All doubts must be resolved in favor of its validity, and before a statute may be stricken down, it must clearly appear the statute violates the constitution." 228 Kan. at 716.

We find nothing arising out of Clarke which challenges the presumption. That case was limited to interpreting what constitutes a state bank in light of the federal statute. No constitutional question was raised. Further, we are persuaded by authority from other jurisdictions which uphold state legislation on branch banking. For example, the Court in Bank of Italy v. Johnson, 25 P. 784 (Calif. 1927) held that states may make any regulations respecting branch banks which are reasonable and uniform. Further, the court held that a rule promulgated by the state branch superintendent restricting branch banks beyond the locality of a parent bank was valid. See also, Bank of Wheeling v. Morris Plan Bank & Trust Co., 183 S.E.2d 692 (W.Va. 1971) (regulating branch banking in state is within authority of legislature).

In conclusion, it is our opinion that state chartered banking institutions may operate branch facilities only within the limitations provided by K.S.A. 1986 Supp. 9-1111, as amended. These limitations are not affected by an interpretation of federal law which allows federally chartered banks to branch in the same manner as state chartered savings associations.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Mark W. Stafford

Mark W. Stafford
Assistant Attorney General

RTS:JLM:MWS:jm