



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

July 28, 1992

ATTORNEY GENERAL OPINION NO. 92- 100

Frank D. Dunnick
Banking Commissioner
Banking Department
700 Jackson, Suite 300
Topeka, Kansas 66603-3714

Re: Banks and Banking; Trust Companies -- Trust
Companies -- Power of Trust Companies to Branch

Synopsis: A trust company's powers do not include the
authority to branch. Cited herein: K.S.A.
9-801; 9-901; 9-1111, as amended by L. 1992,
ch. 61, § 1; 9-1801; 9-2103.

* * *

Dear Commissioner Dunnick:

As state bank commissioner, you request our opinion as to whether a trust company chartered by the office of the state bank commissioner can establish a branch at any location in the state, and if so, whether the trust company can establish this branch location without the consent and/or prior approval of the state bank commissioner or the state banking board.

Your question stems from a conversation with the chief executive officer of a trust company who believes that the following statement contained in K.S.A. 9-2103 allows a trust company to engage in statewide branching:

"A trust company may exercise all powers necessary or incidental to carrying on a trust company business, including, without limitation, all powers conferred upon a business corporation by the Kansas corporation code of 1972 and amendments thereto, and also may exercise the following powers:. . . ." (Emphasis added).

In 1989, the Kansas legislature revised the trust company statutes and placed the trust company statutes within the banking code. At this same time the legislature made a very deliberate attempt to clarify the powers of a trust company. See Minutes, Senate Committee on Financial Institution and Insurance, March 14, 1989; Minutes, House Committee on Commercial and Financial Institutions, January 1, 1989.


From reviewing the applicable statutes it is clear that trust companies are not ordinary corporations. There are specific organization requirements (K.S.A. 9-801 et seq.), special capital stock requirements (K.S.A. 9-901 et seq.) and they are subject to the approval and supervision of the banking board and the commissioner (K.S.A. 9-1801 et seq.). The trust company business is a highly regulated industry because of the fact that trust companies act as fiduciaries.

In 1990 the legislature enacted the statewide branching provision found at K.S.A. 9-1111, as amended, which "created an equitable playing field for [Kansas] state-chartered banks" in that now they had the same branching authority as national banks had enjoyed. See Minutes, House Committee on Commercial and Financial Institutions, January 14, 1990.

The legislature had two opportunities to give trust companies the authority to branch and did not. Further, while the Kansas corporation code gives general powers to corporations, neither it nor the trust company power statute authorize trust companies to branch. "It is a cardinal rule of law that statutes complete in themselves, relating to a specific thing, take precedence over general statutes which deal only incidentally with the same question or which might be construed to relate to it. Where there is a conflict between a statute dealing generally with a subject and another dealing specifically with a certain phase of it, the specific legislation controls." Szoboszlay v. Glessner, 233 Kan.

475, 479 (1983). Based on the foregoing, we are of the opinion that trust companies do not have the power to branch pursuant to K.S.A. 9-2103.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary Jane Stattelma
Assistant Attorney General

RTS:JLM:MJS:bas