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ATTORNEY GENERAL OPINION NO. 2023-6

Mr. Brock Roehler
General Counsel
Office of the State Bank Commissioner
700 S.W. Jackson, Suite 300
Topeka, KS 66612-1597

Re: Banks and Banking; Trust Companies—Banking Code; Supervision;
Commissioner—Examination of Records and Investigative Materials of
Commissioner, Confidential; Disclosure

Banks and Banking; Trust Companies—Banking Code; Crimes and
Punishments—Violation of Act; Commissioner or Deputy to Inform
County or District Attorney

Synopsis: The State Banking Code requires the Bank Commissioner to report
criminal violations of the Banking Code to the county or district
attorney of the county in which the bank or trust company is located.
This includes information that would otherwise be considered
confidential.

The disclosure of confidential information related to other suspected
criminal violations is subject to the 10-day advance notice requirement
in K.S.A. 2022 Supp. 9-1712(c), but this does not prevent the Bank
Commissioner from ultimately reporting those violations. Cited herein:
K.S.A. 2022 Supp. 9-519; 9-1712; 9-2014.

* * *

Dear Mr. Roehler:

As General Counsel for the Office of the State Bank Commissioner, you ask the following questions:

First, does K.S.A. 2022 Supp. 9-519 [*et seq.*] require reporting violations of the State Banking Code to a county in which the bank or trust company is located if no elements of the crime occurred in a county in which the bank or trust company is located?

Second, if the Bank Commissioner discovers violations of the State Banking Code and the Kansas Criminal Code, which counties would the Bank Commissioner be able to report violations to law enforcement agencies?

Third, would the Bank Commissioner be able to provide confidential information it has collected in the course of an investigation or examination to an appropriate law enforcement agency without prior written notification to the bank or trust company under K.S.A. 2022 Supp. 9-1712(c) for violations of the State Banking Code and/or the Kansas Criminal Code?

The State Bank Commissioner regulates state-chartered banks and trust companies in the State of Kansas. Under Kansas law, a bank is an insured bank as defined in 12 U.S.C. § 1813(h), except certain national banks.¹

We are asked to determine the appropriate county where the Bank Commissioner should report a potential violation of the State Banking Code and the Kansas Criminal Code. The State Banking Code requires the following:

It shall be the duty of the commissioner to inform the county or district attorney of the county in which the bank or trust company is located of any violation of any of the provisions of the state banking code, which constitute a misdemeanor or felony, by the shareholders, officers, directors, agents or employees of any bank or trust company, which shall come to the notice of the commissioner.²

In determining the meaning of a statute, courts “first look to the plain language of the statute, giving common words their ordinary meaning. If the plain language of a

¹ K.S.A. 2022 Supp. 9-519(a).

² K.S.A. 2022 Supp. 9-2014.

statute is unambiguous, [courts] do not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it.”³

The plain language of K.S.A. 2022 Supp. 9-2014 requires that the Commissioner shall inform “the county or district attorney of the county in which the bank or trust company is located of any violation of . . . the state banking code.” We find no ambiguity in this statute; it applies regardless of whether any elements of the crime occurred in the county. Of course, it is natural to assume that a county receiving the information would coordinate with the county where the alleged crime has been committed if it is not the county where the bank or trust company is located. We also note that this statute does not prohibit the Commissioner from reporting the violation to additional county or district attorneys, as applicable, although those reports would be subject to the notification requirements discussed below.

You also ask about violations of the Kansas Criminal Code. K.S.A. 2022 Supp. 9-2014 only references the State Banking Code and therefore imposes no requirement to report violations of other criminal statutes. Nevertheless, we would encourage the Commissioner to report other suspected criminal violations to the appropriate authorities as determined by the Commissioner.

Finally, we consider whether the Bank Commissioner can provide confidential information collected in the course of an investigation to an appropriate law enforcement agency without prior notification to the bank or trust company. Under K.S.A. 2022 Supp. 9-1712(a), “[a]ll information the state bank commissioner generates in making an investigation or examination of a state bank or trust company shall be confidential information.” K.S.A. 2022 Supp. 9-1712(c) provides: “Except for disclosure pursuant to subsection (e)⁴ and K.S.A. 9-2014, and amendments thereto, the commissioner shall give 10 days prior written notice to the affected bank or trust company of intent to disclose confidential information.”

The second exception in this statute points to K.S.A. 2022 Supp. 9-2014, the requirement that the Commissioner report violations of the State Banking Code to the county or district attorney where the bank or trust company is located. Thus, this obligation is exempt from the 10-day prior written notice requirement, which should obviate the need to report to another law enforcement entity in the county that does not fall under the two 10-day notice exceptions.

³ *Univ. of Kansas Hospital Authority v. Bd. of County Comm’rs of the Unified Gov’t of Wyandotte County/Kansas City*, 301 Kan. 993, 998-99, 348 P.3d 602 (2015) (internal citations and quotation marks omitted).

⁴ Subsection (e) of K.S.A. 2022 Supp. 9-1712 regards reports to federal and state entities and is not applicable for purposes of this opinion.

K.S.A. 2022 Supp. 9-1712(c) does not provide an exception for confidential information relating to suspected violations of the Kansas Criminal Code, unless the information also relates to a violation of the State Banking Code. Thus, the Commissioner must provide the bank or trust company with written notice at least 10 days before providing that information to a county or district attorney or law enforcement authorities. If the bank or trust company objects to disclosure, K.S.A. 2022 Supp. 9-1712(d) requires the Commissioner to provide the bank or trust company with a hearing. But this does not prohibit the Commissioner from ultimately reporting the suspected violation.

Sincerely,

/s/ Kris Kobach

Kris W. Kobach
Kansas Attorney General

/s/ Charles Macheers

Charles Macheers
Assistant Attorney General