

# Kansas Quarterly Interest

The Newsletter of the Office of the State Bank Commissioner

## Commissioner's Corner

*Judi Stork,  
Acting Bank Commissioner*

As we begin the last quarter of 2006, I thought I would provide some insight on the current events at the OSBC. During late August or early September of each year, all OSBC employees meet for a three day educational conference. As our staff is housed in seven different locations throughout the state, it gives us a chance to reconnect and allows new employees the opportunity to meet existing staff. This year's event was in Lawrence and one of the highlights for me was a visit from KC Wolf!



*Fall 2006*

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Our current Strategic Plan will be ending this year and in the next six months we will hire a facilitator, meet for a working session, and formulate a new five year plan. In addition, we have submitted our budget to the Governor for fiscal years 2008 and 2009. We have once again requested an expansion of our staff -- six new examiners in the Consumer and Mortgage Lending Division -- during this two year period. We regulate over 9,000 entities and individuals in this division and are working to establish a reasonable exam cycle in the supervision of this industry.

In the very near future, the OSBC will select a company to provide an improved agency wide database. When complete, the system will allow us to better serve our constituents by strengthening our presence on the Internet and in the use of e-commerce. It will allow us to accept certain applications and payments via the Web and allow the submission of mandatory reports, such as stockholders' lists and oaths over the Internet. The new system will also allow simpler access to files we have digitally stored and provide remote access to the database for our field staff.

We continue to see a healthy banking industry in Kansas with only seven of our 257 state banks rated a 3, 4, or 5. We have seen an uptick in the problem ratings for the IT area, primarily due to poor auditing procedures, with 27 banks having a 3 rating. Topics on the minds of regulators include the proposed commercial real estate guidance from the FFIEC and how it will be implemented; evaluating core liquidity at banks and the use of borrowings and brokered deposits; data security issues; and predatory lending and consumer protection.

Finally, George Myers, the Director of Examinations in the Banking Division, retired in September after 22 years with our agency; 27 years in bank regulation. Many of you may have crossed paths with George during his career. We wish him well.

# OSBC Annual Conference



The OSBC staff at the Dole Institute of Politics



The OSBC held its eleventh Annual Conference on August 29th, 30th, & 31st, in Lawrence, Kansas. The conference is a once-a-year opportunity for OSBC staff from across the state to convene in one location and discuss current topics and issues. The conference planning committee is comprised of volunteers from both field office and main office staff. This year's committee included Jim Payne (Chairman), Sue Dispensa, Jill Druse, Jeff Heidrick, Bob Myers, Lea Tatum-Haskell, and Mari Tucker.



The conference always features varied and interesting speakers and this year was no exception. Speakers Pearl Rovaris MacDonald, a seminar leader and improv comedienne, discussed innovative thinking and communication skills; Bruce Fitzsimons, Chief Appraiser for First National Bank, Olathe, detailed the real estate appraisal process; Matt Wolters, a Lead Forecaster with the Weather Forecast Office in Topeka, described storm spotter training; Scott Gates, General Counsel for the State Treasurer's office, discussed the Kansas Learning Quest program; Cheryl Miller, the Health Promotion Administrator for HealthQuest demonstrated "Sit and Get Fit" exercises and Dan Meers, aka "KC Wolf", entertained the group with his mascot escapades.

Conference activities included guided tours of the Robert J. Dole Institute of Politics and the Booth Family Hall of Athletics on the University of Kansas campus. Several employees were honored at an awards and recognition lunch, including Dedra Duran-Gray, who was named the OSBC Employee of the Year and George Myers, retiring Director of Examinations. Evening events included a golf tournament at Eagle Bend Golf Course and a "Strolling Down Mass" event in downtown Lawrence.



Photos (clockwise from left): The Conference Committee with KC Wolf; Cheryl Miller; Pearl MacDonald and Lea Tatum-Haskell; Rich Gottschalk and Karl Wolf hit the links.





## The BSA Laundry Room

*Erik Berggren, Review Examiner*

Authoring an article focused on the Bank Secrecy Act (BSA) leaves the field pretty much wide open. And because this is basically the maiden voyage for the topic of BSA to be included as an occasional focal point in future *Quarterly Interest* publications, a very brief history of the OSBC's involvement may prove informative.

As you most certainly know by now, the mandate for financial institutions to undergo the extensive BSA/Anti-Money Laundering (AML) examinations we now have was largely, if not primarily, the result of the events surrounding September 11, 2001. A congressional mandate was handed down for federal banking agencies and regulators to conduct BSA/AML examinations on the financial institutions subject to their oversight. Sensing increased pressure and concerned with their ability to fully satisfy the mandate with their existing workforce, federal regulators solicited the assistance of state financial regulatory agencies to conduct these examinations. The FDIC and FRB willingly and significantly assisted OSBC personnel in riding the BSA/AML learning curve. Our examiners "shadowed" numerous examinations they conducted, and both formal and informal training opportunities were made available. The combination of these things resulted in the OSBC conducting its first independent BSA/AML examination in August of 2004, and we have at least one experienced BSA/AML examiner in each of our four regional offices.

Because the Federal banking agencies have statutory responsibility for enforcement of the BSA/AML regulations in Federally-insured financial institutions, the appropriate Federal agencies will become involved should examination results or other monitoring procedures of the OSBC deem it necessary to pursue some type of enforcement action. In addition to our cooperation with the Federal banking agencies, the OSBC has (as have 39 other state banking agencies as of August 14, 2006) entered into a written agreement with the Financial Crimes Enforcement Network (FinCEN) outlining obligations of each agency

to the other. Most notable is the OSBC's requirement to monitor the frequency and nature of apparent BSA/AML violations, and to file quarterly and annual reports with FinCEN concerning this information. Additionally, even though somewhat limited, the OSBC's access to the highly sensitive and confidential information maintained by FinCEN subjects us to oversight and examination by FinCEN. Rest assured, safeguarding the information and insuring proper use thereof is equally paramount to us.

Knowing full well that there are a seemingly infinite number of resources available aimed at staying abreast of BSA/AML related issues, OSBC personnel have embraced and utilized many to help prepare for whatever the BSA/AML area may present. One such resource is an Interagency AML meeting held on a quarterly basis in Kansas City. These meetings are a combined effort of regulatory agencies for regulatory agencies. The duration of these meetings is usually confined to a single morning, and their purpose is to exchange knowledge and experience concerning current issues, situations, or questions that may have surfaced on a more broad range of BSA/AML issues. The meetings are usually organized and/or hosted by the FRB and FDIC, and the attendees run the full spectrum of regulatory agencies (IRS, FBI, FRB, FDIC, OCC, OTS, U.S. Immigration Customs Enforcement (ICE), Department of Homeland Security (DHS), Department of Justice (DOJ), local law enforcement, various state agencies, etc.). Thus far, OSBC General Counsel Sonya Allen and/or I have been fortunate enough to attend these meetings.

The most recent of these meetings centered on a tour of the Heart of America Regional Computer Forensics Laboratory (HARCFL) in Kansas City, Missouri. Being entirely new to this aspect of law enforcement, the mere existence of such a facility was quite interesting. According to a brochure made available during the tour,

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## Real Estate Appraisals: Revisiting K.A.R. 17-11-21

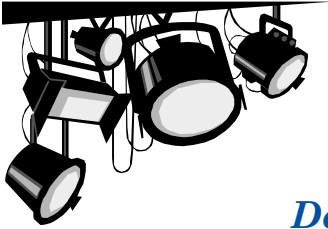
*James Hass, Regional Manager-Central*

With the increasing cost of independent appraisals conducted by licensed or certified appraisers, many bankers elect to conduct “in-house” appraisals, hereinafter referred to as evaluations, as allowed in subsection (b) of K.A.R. 17-11-21 for certain qualifying real estate transactions. Subsection (b) states: “Two officers or directors, or a qualified individual who is independent of the bank or trust company and independent of the transaction, may complete an accurate evaluation of real estate mortgaged in the following types of real estate related transactions: (1) Real estate mortgaged securing principal debt of \$250,000 or less; (2) business loans of \$1 million or less secured by real estate, if the primary source of repayment is not dependent upon the sale of, or rental income from, the real estate; or (3) renewals or refinancing of loans, in any amount, secured by real estate, if either of the following conditions is met: (A) There is no advancement of new monies other than funds necessary to cover reasonable closing costs; or (B) there has been no obvious and material change in market conditions or physical aspects of the property that affects the adequacy of the real estate collateral or the validity of an existing appraisal, even with the advancement of new monies.”

Some important points need to be addressed by bankers who choose to conduct evaluations. First, subsection (b) of the regulation requires the individuals performing the evaluation to view the premises, make a written statement of value, and sign and file the statement with the bank. Also, subsection (d) requires that the land and improvements of the property be appraised separately in the evaluation.

The OSBC has made some interpretations of K.A.R. 17-11-21 to more clearly state the OSBC’s expectations for evaluations. Specifically, the contents of an evaluation below the FIRREA de minimis threshold of \$250,000 and greater than \$25,000 should include the following basic information. (1) A legal description of the property, including street address (if applicable), and its present use; (2) The owner(s) of the property; (3) The type and general condition of improvements, including their approximate age, size, and construction; (4) The date of the appraisal and the signature and address of the appraisers; and (5) The basis for the appraised value – i.e. comparable sales of similar property, cost of replacement, or income derived from the property. Generally, a brief explanation, which demonstrates the value was determined in a logical manner, is sufficient. Again, information on comparable sales is preferable, but consideration will be given to the market area and level of real estate activity. Use of comparable sales data from a multiple listing service or current tax assessment valuation may be appropriate in certain situations.

A “Real Estate Evaluation Form” is attached to RM2000-3 (available at <http://www.osbckansas.org/DOB/DOBRegMail/RM2000-3.html>) and is an example of a form that may be used to evaluate real estate between \$25,000 and \$250,000. Many banks have utilized county tax assessments or Inventory Content Sheets (ICS) to evaluate real estate and support the county appraisal with comparable sales. However, since county appraisals of different properties may be either overvalued or undervalued, it is important that the banker or appraiser make adjustments to the value given in the county appraisal, if they deem it to be necessary. Bankers should also ensure that the county tax assessment includes separate values for land and improvements.



## Employee Spotlight

### *Dedra Duran-Gray, Financial Examiner*

This quarter's Employee Spotlight is on Dedra Duran-Gray, a Financial Examiner Senior in the Topeka office of the East Region. Dedra graduated from Washburn University in May 2002 with a Degree in Finance. She began her career with the OSBC in September 2002, following her five years of previous employment with Commerce Bank & Trust, Topeka, Kansas. Dedra was honored as the Employee of the Year during this year's OSBC Annual Conference. "Dedra is a dedicated individual who exemplifies all the desired qualities of an OSBC employee", said Commissioner Judi Stork. "She has a very positive attitude and is truly an asset to our agency and the Topeka crew".



Commissioner Stork presents the Employee of the Year award to Dedra.

In addition to her examination duties, Dedra has served two years on the planning committee for the OSBC Annual Conference. She enjoys all educational opportunities afforded to her and has recently attended the FDIC's Information Technology Examination Course in Washington D.C. In addition, she participates in the OSBC's Education Assistance Program and is working on her M.B.A. at Washburn University.

Dedra has lived all of her life in Topeka, Kansas. She graduated from Shawnee Heights High School and has recently moved back into her old neighborhood stomping grounds. She is very happy to be in a new home and hopes to some day start her own family. In the meantime, she is the proud momma of her three dogs named Ce Ce, Chloe, and Cammie. In her free time, she enjoys spending time with her family and friends. She also likes to decorate cakes and watch the Miami Dolphins football games with her husband, Jeremy.

## Bank Application Summary

### *Dana S. Hampton, Director of Corporate Activities*

In the summer issue of Quarterly Interest, we reported the total number of state-chartered banks at 258. The number of Kansas state-chartered banks currently totals 257. On July 1, 2006 The State Bank, Winfield, merged out of existence. The transaction involving the bank took place in several steps and in the end, offices of The State Bank became branches of Union State Bank, Arkansas City. Ten state-chartered trust companies continue to operate in Kansas. Also, since June 30, we have received notice of the opening or relocation of several branch offices. Information about these offices follows.

State Bank of Delphos, Delphos, opened a branch office at 201 East Main Street, Glasco, on July 15, 2006. The Hays office of The Ellis State Bank, Ellis, moved from 2700 Oak Street to 2428 Vine Street, on July 24, 2006. Security State Bank of Kansas City, Kansas City, opened a branch at 444 Minnesota Avenue, Kansas City, as a result of the acquisition of a branch office of Bank Midwest, N.A., Kansas City, Missouri.

Concerning other activities of Kansas state-chartered banks, Silver Lake Bank, Topeka, was granted trust powers August 23, 2006. The name of Emporia State Bank and Trust Company, Emporia, was changed to ESB Financial on September 7, 2006.

If you desire more details of any of these transactions, please feel free to contact our office.

## The BSA Laundry Room

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"The RCFL Program is a national network of FBI sponsored, full-service digital forensics laboratories and training centers. The FBI provides start-up and operational funding, training, and equipment, while state, local, and other federal law enforcement agencies assign personnel to work as Examiners. An RCFL is devoted entirely to the examination of digital evidence in support of criminal investigations, such as, but not limited to- terrorism, crimes of violence, child pornography, theft or destruction of intellectual property, Internet crimes, fraud, and murder."

The brochure also reveals there are presently ten Regional Computer Forensics Laboratories (RCFL) operating throughout the country, with four future locations. A visit to [www.rcfl.gov](http://www.rcfl.gov) will provide more information concerning the Program as a whole, and visiting [www.harfcfl.org](http://www.harfcfl.org) will provide information specific to the HARCFL. According to the RCFL Annual Report for 2005, the HARCFL was established in 2003 and services the State of Kansas and the western two-thirds of Missouri; a total of 171 counties. The Annual Report also lists 16 law enforcement agencies in HARCFL's service area that participate with HARCFL.

An Autumn 2005 issue of *Kansas Peace Officer* contains an article that focuses on the HARCFL and conveys the following:

*"The idea that computers and other forms of electronic communications are limited to white collar crime matters is now outdated. **Any** criminal investigation is likely to involve an examination of some type of electronic communication or storage device"*

This same article highlights the HARCFL's involvement in some of the more high-profile criminal investigations in the country; namely the "BTK" serial killer, the murder of a young pregnant woman in Missouri whose unborn fetus was cut from her body, and a homicide investigation involving former KSU professor Thomas Murray, who received a life sentence for murdering his estranged wife. HARCFL Director Kevin Steck, who actually conducted the tour, made us all pause for thought when he reiterated the fact that almost every crime committed in today's world involves some type

of electronic communication or storage device; phones (all types), cameras, calculators, flash/thumb drives, surveillance cameras, ATMs, magnetic strip card readers, etc., etc., AND computers. Should you come upon an opportunity to tour such a facility, do not pass it up!

The agendas for the previously mentioned Interagency AML meetings include a time segment for a fraud update from FDIC. At the most recent of these meetings, FDIC Case Manager (Special Activities) Rick Gross made mention of an increased frequency of insider fraud, as referenced in the Association of Certified Fraud Examiners (visit: <http://www.acfe.com/home.asp>) "Report to the Nation" (RTTN) (visit: <http://www.acfe.com/documents/2006-rttn.pdf>). Not to get you paranoid or anything, but Rick's summary comments of this aspect of the RTTN conveyed that the most trusted, most respected, longest employed, best educated, and best compensated are common characteristics of those committing insider fraud. So, by all means, do not sidestep dual control, cross-training, and independent review procedures in the daily operation and audit steps of your institution!

While not making any kind of endorsement of the Association of Certified Fraud Examiners, further review of that website revealed a Fraud Prevention Checklist at [http://www.acfe.com/documents/Fraud\\_Prev\\_Checkup\\_IA.pdf](http://www.acfe.com/documents/Fraud_Prev_Checkup_IA.pdf). The checklist is not necessarily geared specifically toward banks, but the approach presented does appear valuable and worth considering. The seven-question process suggest consideration of: 1) Fraud risk oversight; 2) Fraud risk ownership; 3) Fraud risk assessment; 4) Fraud risk tolerance and risk management policy; 5) Process level anti-fraud controls/re-engineering; 6) Environment level anti-fraud controls; and 7) Proactive fraud detection. Take a few moments and see how you score.

I would be remiss if somewhere within this article I did not remind you of the July 28, 2006 release of the revised FFIEC BSA/AML Examination Manual. It was officially announced by way of FIL-71-2006 dated

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## The BSA Laundry Room

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Aug. 2, 2006, which is accessible via the web at <http://www.fdic.gov/news/news/financial/2006/fil06071.html>. The revised manual is accessible via the web at [http://www.ffiec.gov/bsa\\_aml\\_infobase/default.htm](http://www.ffiec.gov/bsa_aml_infobase/default.htm). It contains a wealth of information, and outlines most everything that might be touched upon during a BSA examination conducted by your designated regulatory agencies. The Interagency Transmittal Letter is accessible at <http://www.fdic.gov/news/news/financial/2006/fil06071a.pdf>, and outlines the significant revisions and updates to the manual. CSBS has also made available a PodCast entitled "Recent Revisions to the FFIEC's BSA/AML Examination Manual" at <http://innovativelearning.blogs.com/>. This 12-minute interview between CSBS's SVP Roger Stromberg and Carol Van Cleef, partner in the Washington, DC office of the law firm of Bryan Cave LLP, provides highlights regarding the additions to (risk assessment and ACH) and changes in (foreign correspondent banking, private banking, SARs, trade finance activities, OFAC, red flags, and CIP) the newly revised FFIEC BSA/AML Examination Manual. Ms. Van Cleef leads the firm's MSB and AML Compliance teams. The PodCast is well worth a listen. In the PodCast, Ms. Van Cleef notes the "beefed up" version of "red flags." These are listed in Appendix F of the manual, which is entitled "Appendix F: Money Laundering and Terrorist Financing "Red Flags." It spans nine pages of the manual, but is a good refresher for what is the emphasis of BSA/AML; recognizing and taking appropriate action concerning suspicious or unusual activity.

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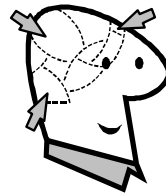
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## Barrister's Brain



As a regular feature in *Quarterly Interest*, our advice columnist, Barry Barrister, will answer a legal question the OSBC has received that we think would be of interest to bankers. Even though he's a fictional lawyer (arguably the best kind), Barry has insisted we include the caveat that the advice he dispenses is general in nature, and is not intended as a substitute for obtaining specific legal advice from counsel when necessary.

Dear Barry:

We are preparing to pay a dividend, and our internal auditor has found a statute that we were not previously aware even existed. It's K.S.A. 9-911, Declaration of Dividends. Is this a new provision? Are we in trouble?

- Blissfully Unaware Banker Brenda

Dear Brenda:

Well, this is no new provision. In fact, it has been part of the banking code since well before 1947! In a nutshell, the statute requires that before paying a dividend from undivided profits the bank must transfer 25% of its net profits since the last preceding dividend to its surplus fund, until the surplus fund equals the total capital stock. And, don't forget, if you have issued preferred stock, that stock is included in "total capital stock" as well. As far as whether you are in trouble if you have failed to make this transfer in the past, my sources tell me you should contact your *friendly review examiner* at the OSBC for guidance on how to correct the violation.

Lawfully yours,

Barry

***Congratulations to....  
George Myers,  
Director of Examinations,  
Banking Division***



***on his retirement  
September 22, 2006***

***THANKS for 22 years of service  
to the OSBC!***

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***What's New?***

This edition of the Kansas Quarterly contains another new feature article, "The BSA Laundry Room". This column will highlight areas of interest in the Bank Secrecy Act/Anti-Money Laundering (BSA/AML) area and will be written by Erik Berggren, a Senior Review Examiner at the OSBC. Twice a year, Erik will provide commentary on the changing world of BSA/AML. We hope our readers will find this new addition relevant, interesting and informative.