

To: All State-Chartered Banks
From: William Grant, General Counsel
Date: April 7, 1995

Re: Special Order 1976-2; House Bill 2074

Effective March 9, 1995, H.B. 2074 was enacted into law by publication in the Kansas Register. I have enclosed a copy of this legislation for your review. In particular, I bring your attention to New Section 3 of the bill (column 1, page 325, Ks. Reg.) which is on the second page of the copy of the bill provided. This provision deals with state chartered banks' ability to engage in the leasing of tangible personal property. The department requested this legislation to modernize the authorities governing this activity as well to ensure parity between state and national banks.

Prior to enactment of H.B. 2074, state chartered banks' leasing activity was governed by the antiquated K.S.A. 9-1101 (10), which has been repealed by this bill (column 2, page 326, Ks. Reg.). Additionally, personal property leasing has been governed by Special Order 1976-2, which was passed December, 1976, pursuant to the board's wild-card authority. This special order was passed to provide state banks the ability to "participate" in existing leases originated by some party other than the bank. The order provided state banks with the same participation authority that is possessed by national banks. A copy of the order is enclosed.

However, reliance on two distinct authorities, plus several memos issued by the department and the OCC, has created a regulatory scheme characterized by conflicting provisions and confusion. Because the prevalence of leasing of personal property as a financing vehicle has steadily increased, the prudent course of action was to develop a more comprehensive approach to regulating this activity and request the legislature to enact a single statute on the subject.

An example of conflict created by the interaction of the 9-1101 (10) and Special Order 1976-2 is the fact that the statute explicitly excepted leases from the limitations placed on loans but the special order imposed limitations closely resembling lending limits on those leases the bank entered into by way of participation.

The new statute has preserved the appropriate safeguards contained in the statute and the special order. The leases will be subjected to structuring guidelines that will require the transaction to be the functional equivalent of a loan and will also be subjected to legal lending limits in the same fashion as a loan. The statutory language is conceptually fashioned after the federal regulation which has governed this activity since 1979.

Enactment of H.B. 2074 has allowed the Commissioner, with the prior approval of the State Banking Board, to revoke Special Order 1976-2, effective April 6, 1995.

Notice of Revocation

WHEREAS, pursuant to Kansas Statutes Annotated 9-1715(b), the State Bank Commissioner, with the prior approval of the State Banking Board, issued Special Order 1976-2 on December 20, 1976 regarding the purchase of personal property lease participations; and

WHEREAS, it has been determined by the State Bank Commissioner that 1995 House Bill 2074, effective March 9, 1995, sufficiently addresses the concerns which

prompted the need for Special Order 1976-2; and

WHEREAS, after due consideration of the recommendations of the State Bank Commissioner, the State Banking Board voted on March 20, 1995 to revoke Special Order 1976-2;

NOW, THEREFORE, with the prior approval of the State Banking Board, Special Order 1976-2 is hereby revoked by the State Bank Commissioner. This revocation shall take effect this 6th day of April, 1995.

IT IS SO ORDERED.

STATE BANK COMMISSIONER
Frank D. Dunnick