



Office of the State Bank Commissioner

Regulatory Mailing

RM 2002-3

TO: All State-Chartered Banks
FROM: Franklin W. Nelson, Bank Commissioner
DATE: March 6, 2002
RE: Corporate borrowing resolutions in loan files

Examiners routinely check loan files to ensure that if a corporation is the borrower, there is a corporate board resolution authorizing certain individuals to act on behalf of the corporation in its dealings with the bank. Questions have come up on occasion concerning the age of the resolution. Specifically, there have been questions about how old a resolution can be and still be valid. Informal direction provided from this office in the past has said if the resolution is more than five years old, then the bank should obtain a new resolution. This advice was based on the general statute of limitations in Kansas on contracts being five years. While this does create a nice "bright line" test, upon further review, its legal basis appears tenuous at best. As the resolution is not really a "contract" in the legal sense, our office has determined it is inappropriate to apply a contractual statute of limitations to ascertain the validity of the resolution. In the case of a closely held corporation where the directors remain the same over a long period of time, the resolution would remain valid until amended or revoked by the directors, and could continue to be relied on by the bank beyond a five-year window. However, when changes are made in the corporation's directors that would result in a majority of the board consisting of new people, the department does believe it would be prudent for the bank to obtain a new resolution from the corporation, or have the corporation's board ratify the existing resolution in some manner.

The department's policy going forward is as follows.

1. Examiners will continue to check loan files to ensure a borrowing resolution has been obtained by the bank. If there is no borrowing resolution on file at the bank, a violation of K.A.R. 17-11-18 would be cited, due to a lack of complete and current credit information.
2. If there is a resolution on file, but the resolution is more than 5 years old, examiners will point out the age of the resolution to the bank and suggest to the bank they verify with their corporate borrower the continued validity of the resolution.