

Memo 1995-5 Use of Word "Bank" in a Corporation Name

TO: Memo Book
FROM: Sonya Allen, Staff Attorney
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RE: **Use of the word "Bank" in a corporation's name**

CJS Banks and Banking § 53 offers the following guidance concerning the use of the words "bank" and "banking" in a corporation's name:

"Where a statute prohibits the uses of such words except by deposit banks, the designation 'investment banker' or any similar designation containing the words 'bank,' 'banker,' 'banking,'... may not be used by anyone not doing a deposit business or subject to banking regulations"

The Kansas statute which addresses this issue is K.S.A. 9-2011, which states:

It shall be unlawful for any individual, firm or corporation to advertise, publish or otherwise promulgate that they are engaged in the banking business ... without first having obtained authority from the bank commissioner as herein provided . . ."

It is the department's position that the primary purpose of this statute is to protect consumers from being led to believe that a business is subject to banking laws and regulations and that such business' financial condition, affairs and activities are closely monitored by a bank regulator.

The use of the word "bank" or any derivation thereof (i.e. banc, banque, etc.) in the title of a business by an individual, firm, or corporation may constitute advertising to the general public that such individual, firm or corporation is engaged in the banking business. However, such advertisement or promulgation is only lawful for those who are engaged in the business of banking, and only an individual, firm or corporation who has obtained authority from the state bank commissioner may lawfully engage in the banking business. Those who use the word bank without obtaining such authority are, in effect, holding out to the public that they have obtained such authority and are a "bank", subject to banking laws, regulations, and supervision, when in fact they are not. Such an assertion through advertising is deceptive and confusing to the public, and is exactly the type of activity intended to be prohibited by K.S.A. 9-2011.

Of course, there are exceptions, as certain types of businesses which are clearly not in the business of banking may use the word bank without causing any confusion. For example, consumers would not believe the "Blood Bank" was subject to banking laws and regulations. The opportunity for confusion, and consequently, the need for consumer protection, becomes more apparent, however, when the corporation is offering financial services which in the eyes of the consumer appear to be the same or similar to those offered by banks.

In light of these considerations and the need for the protection of consumers, the likelihood of causing confusion by using the word "bank" or other forms of the word vary greatly depending on the nature of the business, the amount of direct public contact, and the way the word "bank" is used by the entity. Therefore, the department will review each situation on a case by case basis to determine whether the chance of confusion is great enough to warrant a determination that the particular use of the word could be construed as promulgating that the entity is lawfully engaged in the business of banking. The criteria the department will use to analyze each situation will vary according

to particular facts presented. However, important factors to be considered in every case will include the type of services provided by the business, the sophistication of the parties the entity interacts with, and the amount of contact that business has with the general public.