

Kansas Administrative Regulations

Office of the State Bank Commissioner

Article 23.—Trust Supervision

17-23-8. Self-dealing.

(a) Unless lawfully authorized by the instrument creating the relationship, by court order or by the laws of the state of Kansas, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested in stock or obligations of, or property acquired from any of the following:

(1) The bank or trust company, or its directors, officers, or employees, or individuals with whom there exists such a connection;

(2) organizations in which there exists an interest that might affect the exercise of the best judgment of the bank or trust company in acquiring the property; or

(3) affiliates of the bank or trust company, or their directors, officers or employees.

(b)(1) A bank or trust company shall not lend, sell, or otherwise transfer assets of a fiduciary account for which a bank or trust company has investment discretion to the bank or trust company or any of its directors, officers, or employees, or to affiliates of the bank or trust company or any of their directors, officers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the bank or trust company, unless any of the following conditions is met:

(A) The transaction is lawfully authorized by the instrument creating the relationship, by written direction from the person or persons holding the power to amend or terminate the trust, by court order or by the laws of the state of Kansas;

(B) legal counsel advises the bank or trust company in writing that the bank or trust company has incurred, in its fiduciary capacity, a contingent or potential liability, and the bank or trust company desires to relieve itself from the contingent or potential liability. In this case, the bank or trust company, upon the consummation of the sale or transfer of assets, shall make reimbursement in cash at the greater of book or market value of the assets to the fiduciary account;

(C) the transaction is authorized as is provided in paragraph (b)(8)(B) of K.A.R. 17-23-11; or

(D) the transaction is required in writing by the state bank commissioner.

(2) Notwithstanding paragraph (b)(1), a bank or trust company may lend funds held in trust to participants and beneficiaries of employee benefit plans in accordance with the exemptions found in section 408 of the employee retirement income security act of 1974, 29 U.S.C. §1108, as in effect on December 17, 1999, which is hereby adopted by reference.

(c) Except as provided in subsection (b) of K.A.R. 17-23-6, funds of a fiduciary account for which a bank or trust company has investment discretion shall not be invested by the purchase of stock or obligations of the bank or trust company or its affiliates unless authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas.

(1) If the retention of stock or obligations of the bank or trust company or its affiliates is authorized by the instrument creating the relationship, by court order, or by the laws of the state of Kansas, it may exercise rights to purchase its own stock, or securities convertible into its own stock, when offered pro rata to stockholders.

(2) If the exercise of rights or receipts of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired.

(d) A bank or trust company may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and is not prohibited by any governing instrument.

(e) A bank or trust company may make a loan to an account from the funds belonging to another account, if the making of these loans to a designated account is authorized by the instrument creating the account from which the loans are made.

(f) A bank or trust company may make a loan to an account and may take as security assets of the account, if the transaction is fair to the account.

(g) Except with the specific written approval of its board of directors, a bank or trust company shall not permit any of its current officers or employees to retain any

compensation for acting as a cofiduciary with the bank or trust company in the administration of any account undertaken by it.

(Authorized by K.S.A. 2000 Supp. 9-1713; implementing K.S.A. 9-1601, K.S.A. 9-1609, K.S.A. 9-1611, and K.S.A. 2000 Supp. 9-2103, as amended by L. 2001, ch. 27, §1; effective Feb. 28, 1994; amended Jan. 18, 2002.)

***** Authenticated Kansas Administrative Regulation *****