

Memo 1994-25 Charged-Off Debt of Insiders

TO: Memo Book
FR: William D. Grant Jr., General Counsel
DT: September 7, 1994

ISSUE: Does the requirement of forfeiture of position by a director or officer who becomes indebted to the bank on charged-off debt pursuant to K.S.A. 9-1114 and 9-1115, also require forfeiture if the debt is forgiven by the bank?

ANALYSIS: K.S.A. 9-1114 and 9-1115 provides a director or an officer "... who shall become indebted to such bank or trust company on any judgment or charged off indebtedness shall forfeit such person's position..."

This requirement clearly requires an officer's or director's removal from any management role with a bank to which they have failed to repay an obligation. This provision is designed to protect against voluntary non-collection of insider loans, to preserve the credibility and integrity of bank management, and to maintain the bank's effectiveness in requiring its customers to meet their obligations to the bank.

Additionally, the directors and the president of a bank are required to be stockholders of the bank and therefore, at some point, may be relied upon to supply additional capital for the maintenance of the institution's viability. Inherent in this requirement is the state's interest in assuring that bank management possess the wherewithal to meet their financial obligations.

The language of the statutes do not specifically address the circumstance where the judgment or debt of the director or officer is eliminated by virtue of the bank's voluntary forgiveness of the obligation. However, with the above-mentioned concerns and the underlying rationale for requiring resignation in mind, it would directly conflict with the objectives of the statutes to allow voluntary forgiveness to relieve the officer or director of the resignation requirement.

Based upon this conclusion, voluntary elimination of a judgment or debt by the institution is not grounds for avoidance of the resignation requirements of K.S.A. 9-1114 and 9-1115.