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January 6, 2017

ATTORNEY GENERAL OPINION NO. 2017- 2

The Honorable Terry Bruce
Senate Majority Leader
Chair, Confirmation Oversight Committee
State Senator, 34th District
P.O. Box 726
Hutchinson, Kansas 67504

Re: State Boards, Commissions and Authorities—State Banking Board—State Banking Board; Qualifications; Appointment; Senate Confirmation, Residence Requirements; Terms; Vacancies

Synopsis: A member of the State Banking Board who was appointed to fill a vacancy in an unexpired term and who was subsequently reappointed to serve another term, has served two terms, and therefore, is ineligible under K.S.A. 74-3004 for reappointment. Cited herein: K.S.A. 74-3004.

* * *

Dear Senator Bruce:

As Chair of the Senate Confirmation Oversight Committee, you request our opinion on the eligibility for reappointment of a member of the State Banking Board who was appointed to fill a vacancy in an unexpired term and who was subsequently reappointed to serve another term. Put simply, you ask whether filling the unexpired term is deemed to be serving a “term” for purposes of K.S.A. 74-3004, which limits a member of the State Banking Board to two terms.

K.S.A. 74-3004 created the State Banking Board and provides for the qualifications and term of the Board’s members. Subsection (b) provides:

Except as provided by subsection (c), terms of members of the board shall be for three years. Each member shall serve until a successor is

appointed and confirmed. No person shall serve more than two terms as a member of the board. In the event of a vacancy on the board, the governor shall appoint a new member of the same qualification to fill the unexpired term.¹

Subsection (c) provides:

The terms of members who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of three years and until their successors are appointed and confirmed.

Attorney General Stovall opined on the question of how a term is construed pursuant to K.S.A. 74-3004. In Attorney General Opinion No. 97-43, General Stovall concluded that:

K.S.A. 1996 Supp. 74-3004(b) requires that appointees to State Banking Board vacancies fill the unexpired term of the preceding member. The commencement of a term of office is the date on which the original member was appointed. A member who has filled a vacancy and served a full term has completed two terms and therefore, according to the statute, is ineligible for reappointment.

We have examined the statutes and the Kansas case law cited in Attorney General Opinion No. 97-43 and, having found no changes requiring a different conclusion, we reaffirm the opinion and adopt its conclusion here. Therefore, a member of the State Banking Board who was appointed to fill a vacancy in an unexpired term and who was subsequently reappointed to serve another term has served two terms and is ineligible under K.S.A. 74-3004 for reappointment.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Athena E. Andaya

Athena E. Andaya
Deputy Attorney General

DS:AA:sb

¹K.S.A. 74-3004.