



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 6, 1978

ATTORNEY GENERAL OPINION NO. 78-109

Payne H. Ratner, Jr.
403 Columbian Title Building
820 Quincy Street
Topeka, Kansas 66612

Re: National Banks--Branching--Regulation

Synopsis: The operation of a loan production office by a national bank does not constitute branch banking for the purpose of 12 U.S.C. 36(c) and is therefore allowable for national banks operating in the State of Kansas so long as loans are approved and made at the main bank office.

* * *

Dear Mr. Ratner:

You inquire whether the maintenance of a "loan production office" in the City of Leavenworth by the Exchange National Bank of Atchison is in violation of 12 U.S.C. 36(c). Further you inquire concerning a recommended course of action in case a violation exists. 12 U.S.C. 36(c) in pertinent part provides as follows:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches:...(2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.

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Through this statute, congress has adopted the policy that "branch banking" by national banks be regulated on the same basis as for state banks. Title 12 U.S.C. 36(c) will prohibit the establishment of a branch by a national bank in Kansas which contravenes K.S.A. 9-1111.

However, notwithstanding this policy, in each case, a threshold question exists whether a particular activity undertaken by a national bank constitutes "branch banking" for the purposes of 12 U.S.C. 36(c). Title 12 U.S.C. 36(f) defines a national bank branch "to include any branch bank, branch office, branch agency, additional office, or any branch place of business...at which deposits are received, or checks paid or money lent." In the case of First National Bank in Plant City, Florida vs. Dickinson, 396 US 122 (1969), the United States Supreme Court held that the question whether a particular activity undertaken by a national bank constitutes "branching" must be resolved as a matter of federal law. In pertinent part the opinion states:

"We reject the contention made by amicus curiae National Association of Supervisors of State Banks to the effect that state law definitions of what constitutes 'branch banking' must control the content of the federal definition of Section 36(f). Admittedly, state law comes into play in deciding how, where, and when branch banks may be operated,...for in Section 36(c) Congress entrusted to the States the regulation of branching as Congress then conceived it. But to allow the States to define the content of the term 'branch' would make them the sole judges of their own powers. Congress did not intend such an improbable result, as appears from the inclusion in Section 36 of a general definition of 'branch'."

The Comptroller of the Currency is charged with the responsibility and authority to interpret and apply 12 U.S.C. 36(c) and (f). With respect to "loan production offices", the Comptroller has issued regulations specifically in point. 12 C.F.R. 7.7380 in pertinent part provides as follows:

"Origination of loans by employees or agents of a national bank or of a subsidiary corporation at locations other than the main office or a branch office of the bank does not violate 12 U.S.C. 36 and 81: Provided, that the loans are approved and made at the main office or a branch office of the bank or at an office of the subsidiary located on the premises of, or contiguous to, the main office or branch office of the bank."

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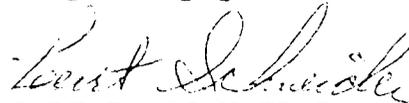
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Thus, we conclude that, so long as conditions of 12 C.F.R. 7.7380 are met, the operation of a "loan production office" in the City of Leavenworth by the Exchange National Bank of Atchison is proper under applicable federal law, and no action on the part of the Kansas Banking Commissioner is warranted.

As a result, national banks do enjoy a certain competitive advantage over state banks. Although in each instance a loan must be finally approved at the main banking office, national banks enjoy the additional advantage of generating loans, for final approval at the main bank premise, at off premise locations. If this competitive differential is to be corrected, it can only be done through state legislative action.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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