



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

March 24, 1978

ATTORNEY GENERAL OPINION NO. 78- 125

Mr. Payne H. Ratner, Jr.  
Ratner, Mattox, Ratner,  
Ratner & Barnes  
Columbian Title Building  
Topeka, Kansas 66603

Re: Banks--Detached Facilities--Loan Production Offices

Synopsis: A national bank may establish and operate a loan production office on the premises of a detached facility which has been established in conformity with K.S.A. 9-1111.

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Dear Mr. Ratner:

In Opinion No. 78-109, we concluded that the establishment of a loan production office by a national bank did not violate the prohibition against branch banking at K.S.A. 9-1111.

In Opinion No. 78-115, we concluded that the State Bank Commissioner has no authority under K.S.A. 9-1715 to authorize a state bank to establish a loan production office on the premises of a detached facility.

You raise the further question whether a national bank may establish a loan production office on the premises of a detached facility authorized by K.S.A. 9-1111. By letter to Senator Paul Hess, chairperson of the Senate Committee on Commercial and Financial Institutions, we related the views of the Office of the Comptroller of the Currency of the U.S. Department of the Treasury, that when a national bank is authorized to establish a detached facility conforming to the restrictions governing location in K.S.A. 9-1111, the national bank is authorized by the Comptroller to offer all

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all banking services at that facility free of the restrictions upon services applicable to state banks. It should be emphasized that our letter to Senator Hess was not and did not purport to be an opinion of law of this office, but was rather a statement of the view of the Comptroller of the Currency, which we had been asked to obtain and relay.

In *First National Bank v. Walker Bank and Trust Company*, 385 U.S. 343, 17 L.Ed.2d 343, 87 S.Ct. 492 (1966) and *First National Bank in Plant City, Florida v. Dickinson*, 396 U.S. 122, 24 L.Ed.2d 312, 90 S.Ct. 337 (1969), the Court reviewed the history of the McFadden Act. In the latter case, the Court stated thus:

"The conditions under which national banks may establish branches are embodied in § 7 of the McFadden Act . . . . One such condition is that a 'branch' may be established only when, where, and how state law would authorize a state bank to establish and operate such a branch . . . ." 396 U.S. at 130.

Clearly, it is settled that federal law determines what constitutes a "branch." Properly regarding a detached facility under K.S.A. 9-1111 as a branch bank, the Comptroller must permit national banks to establish such facilities subject to the restrictions in that section. The Comptroller, however, takes the view that having accorded the necessary deference to state law regarding "when," "where," and "how" a detached facility, or "branch" may be established, that the national bank is authorized to transact all banking business at such branch which it could transact at the main banking house; i.e., because a detached facility constitutes a "branch" bank under the McFadden Act, as administered by the Comptroller, that office applied federal law in determining the scope of business which may be transacted there. The United States Supreme Court, and every other federal court dealing with these questions, has recognized that the congressional policy underlying the McFadden Act to promote "competitive equality" between national and state banks. In *Dickinson, supra*, the Court stated thus:

"The policy of competitive equality is therefore firmly embedded in the statutes governing the national banking system. The mechanism of referring to state law is simply one designed to implement that congressional intent and build into the federal statute a self-executing provision to accommodate to changes in state regulation." 396 U.S. at 133.

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Whether this policy compels deference to state law regarding not only the number and location of detached facilities or branch banks, but also regarding the services which may be offered thereat is a question which has been not conclusively resolved.

That question is not presented here, however, the sole question being whether a national bank may establish a loan production office on the premises of a detached facility established in conformity with K.S.A. 9-1111. As indicated in Opinion No. 78-109, a loan production office at which loan applications are received, but which are subject to approval at the main banking premises, is not a branch bank, and a national bank may establish loan production offices at any location it deems feasible. Even if the service restrictions applicable to detached facilities operated by state banks were held applicable to detached facilities operated by national banks, a question which we need not resolve, the operation of loan production office or service on the premises of a detached facility would not violate those restrictions, and is thus not prohibited by K.S.A. 9-1111.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:jj