



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider,
Attorney General

March 22, 1976

ATTORNEY GENERAL OPINION NO. 76-102

Mr. Arthur Gabriel
State Bank Commissioner
Kansas Banking Department
818 Kansas Avenue - Suite 600
Topeka, Kansas 66612

Re: Banks--Branch Banking--Armored Car Service

Synopsis: Payment by a bank of the costs of armored car service provided by the depositor or by an independent carrier whose services are contracted by the depositor does not constitute "branch banking," prohibited by the Kansas banking code.

* * *

Dear Commissioner Gabriel:

You request our opinion upon an arrangement presently being considered by the Douglass State Bank, Kansas City, Kansas, for the servicing of deposits from the United States Customs Service, which has requested that the bank be authorized to accept deposits from its representatives at the Port of Kansas City for credit to the General Account maintained at that bank by the U.S. Department of the Treasury. You enclose a copy of a letter dated February 13, 1976, addressed to Mr. Sharnia Buford, president of the bank, from Mr. Charles F. Schwan III, Director, Domestic Banking Staff, Bureau of Governmental Financial Operations, Fiscal Service, Treasury Department.

Mr. Schwan advises that the U.S. Customs Service has requested that the bank be authorized to accept deposits from its representatives at the Port of Kansas City. The deposits would be available

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for pick-up by armored car at 3:00 p.m. each day, and would be credited to the Treasury's account on the books of the bank on the day received by the bank. He writes that "it should be noted that although the armored car service will be acting as an agent for Customs, your bank will be required to assume all costs associated with the delivery of these deposits to your bank."

The question arises whether this arrangement would result in the receipt of deposits by the bank at a place other than its main banking office, or at an attached or detached auxiliary teller facility.

In *First National Bank in Plant City v. Dickinson*, 396 U.S. 122, 24 L. Ed. 2d 312, 90 S. Ct. 337 (1969), the Court held that an armored car messenger service operated by the bank constituted a "branch" bank as defined by the McFadden Act of 1927, 12 U.S.C. § 36, which was prohibited by Florida law. There, the armored car was owned and controlled by the bank; the teller and driver-guard were bank employees; the bank assumed complete responsibility for the monies, checks and deposits during transit by an insurance policy purchased and paid for by the bank; the truck for the name of the bank, had two-way radiophone communications with the bank and all of its movements were directed by the bank.

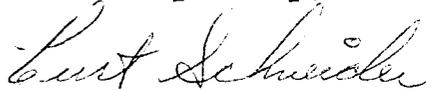
It is not entirely clear from the correspondence whether the armored car service in this instance will be operated by the Customs Service itself, or by an independent contractor, such as Brinks or a like service. If, as Mr. Schwan states, the carrier will operate as an agent of Customs, presumptively Customs will contract for the service, and be reimbursed by the bank for the costs thereof, or the bank will agree to pay directly to the carrier the costs of its service furnished to Customs. Clearly, as described, the carrier will not act as the agent of the bank, but of the depositor. No monies, checks, or other deposits come into the actual or constructive custody of the bank or any of its employees until receipt at the main banking office. The fact that the bank bears the cost of the armored car service, whether it is provided by Customs itself, as the depositor, or by an independent contractor whose services are procured by the depositor, does not alone compel the conclusion that the deposits so transported are received by the bank upon delivery to the carrier for transit to the main banking premises.

On the basis of the information described above, it is my opinion that payment by the bank for the armored car service which is furnished by or under contract with the depositor does not constitute

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"branch banking," or the receipt of deposits at a place other than the main banking premises.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj