



STATE OF KANSAS

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**Curt T. Schneider**  
Attorney General

June 21, 1978

ATTORNEY GENERAL OPINION NO. 78- 205

Mr. Payne H. Ratner, Jr.  
Attorney  
State Banking Department  
403 Columbian Title Building  
820 Quincy  
Topeka, Kansas 66612

Re: Banks--National Banks--Detached Facilities

Synopsis: A national bank is acting within the scope of its certificate of authority in offering loans at and through detached auxiliary banking services facilities which are established in conformity with K.S.A. 9-1111, and is not subject to the constraints of K.S.A. 9-1111 limiting the banking services which may be offered through such facilities.

\* \* \*

Dear Mr. Ratner:

You advise that the First National Bank of Hays, Kansas, is advertising the availability of loans to its customers from a detached auxiliary teller facility, and enclose copies of advertising materials being used by the bank. You inquire whether, under K.S.A. 9-1111, restricting the services which a Kansas bank may offer at a detached facility, a national bank may offer loans from such facilities.

In Opinion No. 78-109, we considered the operation of loan production offices by a national bank, which have been authorized by a regulation of the Comptroller of the Currency, found at 12 C.F.R. § 7.7380 stating thus in pertinent part:

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"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."

Although I understand that this regulation is under attack in actions pending in the federal courts of Oklahoma and the District of Columbia, unless and until it is set aside by the courts, it remains a valid basis for the operation of loan production offices by national banks. In Opinion No. 78-125, we concluded that a national bank may establish and operate a loan production office on the premises of a detached facility which had been established in conformity with K.S.A. 9-1111. Thus, clearly, if the loans are offered through the detached facility as those available through a loan production office, that practice remains permissible, unless and until the applicable regulation is held to be invalid by the federal courts.

It may be that loans are available from the detached facility just as loans are available from the main banking office, i.e., they are authorized and approved directly on the premises of the detached facility. Title 12, U.S.C.A. § 36(c) provides in pertinent part thus:

"A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (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

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to the restrictions as to location imposed  
by the law of the State on State banks."

In First National Bank of 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, the congressional purpose to foster "competitive equality" between national and state banks, and 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.

At the same time, the Court emphasized that federal law, and not state law, controls the content of the definition of the term "branch" at 12 U.S.C. § 36(f), which states thus:

"The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."

The Comptroller of the Currency takes the view that the McFadden Act does not define or recognize different kinds of branches, and does not distinguish among branch banking facilities based upon the kinds of services furnished or permitted to be furnished by state law. If, as here, a national bank is permitted under Kansas law to establish a detached facility which constitutes a "branch" office under the McFadden Act, i.e., an office at which deposits are received, checks paid or money lent, that national bank is permitted under its national bank charter to offer its entire range of banking services at that branch. Stated otherwise,

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the Comptroller defers to state law concerning the number and location of branch banking facilities or "detached auxiliary banking services facilities," as described in K.S.A. 9-1111; once, however, such a facility is established within the constraints of that provision regarding number and location thereof, the federal definition of "branch" controls, and the bank is permitted to offer any service at that branch which it may offer at its main banking offices. This view has not yet been repudiated by any definitive ruling of the federal courts, to my knowledge. Thus, I cannot but conclude that the First National Bank of Hays is operating entirely within its certificate of authority in offering loans through its detached facility and it is not subject to the constraints of K.S.A. 9-1111 limiting the services which state banks may offer at such detached facilities.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj