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ATTORNEY GENERAL OPINION NO. 82- 92

Roy P. Britton  
State Bank Commissioner  
State Banking Department  
818 Kansas  
Topeka, Kansas 66612

Re: Banks and Banking -- Code; Powers -- Location of  
Detached Auxiliary Banking Services Facilities

Synopsis: Where the place of business specified in a bank's certificate of authority is located in an incorporated city, and the city annexes nonadjoining property, the bank may establish a detached auxiliary banking services facility on the annexed property. Once annexed, such property is within the corporate limits of the city, thereby permitting the establishment and maintenance of a detached facility in compliance with the requirements of K.S.A. 1981 Supp. 9-1111(e)(1). Cited herein: K.S.A. 1981 Supp. 9-1111, 12-520.

\* \* \*

Dear Mr. Britton:

On behalf of the State Banking Board, you have asked for our advice regarding the pending application of the Maize State Bank to locate a detached auxiliary banking services facility approximately seven miles from its main bank, which is located in the City of Maize. We are advised that the proposed site of the detached facility is located outside the corporate limits of Maize, although the city's governing body has indicated its intention of annexing the proposed site into the city.

We note from the bank's application to the Banking Board to establish the detached facility that the bank will acquire the property where the facility is to be situated and then

transfer title thereto to the city. Once title is transferred, the city governing body apparently has agreed to annex the property, pursuant to the authority provided by K.S.A. 1981 Supp. 12-520(b), and to issue industrial revenue bonds to finance construction of the detached facility. We do not understand you or the Banking Board to question this procedure, either from the standpoint of the bank's acquisition and transfer of the property or as to the city's annexation authority. While not specifically stated in your letter, it is our understanding that the sole issue presented for our review is whether the proposed site of the detached facility, once it is annexed to the city, complies with the requirements of K.S.A. 1981 Supp. 9-1111 as to the location of such facilities. Subsection (e) of this statute contains the following pertinent provisions:

"(e) [D]etached auxiliary banking services facilities established and maintained under the provisions of this act shall be located:

"(1) Only within the corporate limits of the same city within which the premises specified by the bank as its place of business in its certificate of authority is located, if the same is located within an incorporated city . . . ."

In our judgment, the bank's proposal outlined above satisfies the foregoing statutory requirements. These provisions require only that that, where a bank's main place of business is located in an incorporated city, such bank's detached facilities must be located "within the corporate limits of the same city." It deserves little discussion to note that annexation of territory by a city has the effect of including such territory within the city's corporate limits. See 2 McQuillin Mun. Corp. (3rd Ed.) §7.46. Thus, in this instance, once the proposed site of the detached facility has been annexed to the City of Maize, such site is situated within the city's corporate limits, even though it does not adjoin the city's existing corporate boundaries.

We note that these principles have been relied upon in prior opinions of this office in determining whether residents of property not adjoining the main boundaries of a city are residents of such city. VI Op. Att'y Gen. 355; Attorney General Opinion No. 81-61. The determining factor is whether such nonadjoining property has been validly annexed by the city. Mere ownership of nonadjoining property by the city is not sufficient to place such property within the city's corporate limits. Such distinction was recognized in State, ex rel., v. City of Kansas City, 169 Kan. 702 (1950), where the Kansas Supreme Court was considering a rather complex annexation scheme in which the city contended that its acquisition of

an airfield outside its corporate limits had the effect of annexing such airfield to and incorporating it within the city's boundaries. Such acquisition had been statutorily authorized, and in analyzing the pertinent statute, the Court stated:

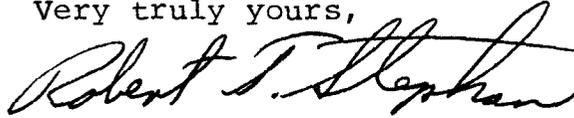
"This is one section of our statute (ch. 3, art. 1, 1947 Supp.) pertaining to municipal airports and fields. It authorizes the governing body of the city to acquire an airfield 'within or without the city limits' by purchase, lease, or otherwise, and to equip, improve, operate and maintain such an airfield, and by section 3-118 a city of the first class may acquire an additional airport 'within or without the city limits.' Other sections provide for joint ownership of an airport by a city and county, or by two or more municipalities. We see nothing in any provision of the statute in question which brings within the corporate limits of a city an airport which it has acquired and which is situated outside of the corporate limits of the city." Id. at 718.

Thus, it is clear that, to be "located within an incorporated city" pursuant to the limitations prescribed in K.S.A. 1981 Supp. 9-1111(e)(1), property must be situated within the corporate limits of the city, including property subsequently annexed thereto. Mere ownership of property by a city does not effect compliance with these requirements. Notwithstanding, we note that the scenario proposed by the Maize State Bank in its application to establish a detached facility is premised on the city's ownership of the proposed site of such facility. Such ownership permits annexation thereof under K.S.A. 1981 Supp. 12-520(b). Accordingly, if the bank cannot validly acquire title to the property in question, or title cannot validly be transferred to the city under the arrangement described in the bank's application, annexation cannot be accomplished under this particular statutory provision, thereby precluding compliance with the pertinent requirements of K.S.A. 1981 Supp. 9-1111. However, we again note that you have not raised, nor do we have sufficient information to address these issues, and our determination as to the propriety of the application now pending before the Banking Board is predicated on the assumption that the city may validly acquire title to the proposed site of the detached facility, thereby permitting annexation thereof.

Roy P. Britton  
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In summary, to state our conclusion in general terms, it is our opinion that, where the place of business specified in a bank's certificate of authority is located in an incorporated city, and the city annexes nonadjoining property, the bank may establish a detached auxiliary banking services facility on the annexed property. Once annexed, such property is within the corporate limits of the city, thereby permitting the establishment and maintenance of a detached facility in compliance with the requirements of K.S.A. 1981 Supp. 9-1111(e)(1).

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



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