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September 14, 1972

FILE NO. S-512

BANKS AND BANKING:
"Loan Production Offices" as
Branch Banks

Honorable H. Robert Bartell, Jr.
Commissioner of Banks and Trust Companies
400 Reisch Building
117-119 South Fifth Street
Springfield, Illinois 62706

Dear Commissioner Bartell:

I have your recent letter in which you enclose and make reference to a copy of a letter received by your office from the Office of the Comptroller of the Currency acting as the Administrator of National Banks. In that letter it is stated that "[a certain corporation] is a wholly-owned subsidiary of [a national banking association having its principal office in Illinois], whose activities consist of soliciting loans and collecting delinquent loans, with all

lending transactions actually consummated at the offices of the parent bank." After some discussion of the Federal statute, and an Interpretive Ruling of the Comptroller of the Currency, the letter concludes:

> "Inasmuch as neither the origination of loans nor the collection of delinquent loans are any of the services the existence of which are necessary to find branch banking by a national bank, the operation of [the corporation in question] conforms to the provisions of Interpretive Ruling 7.7380 and does not conflict with the provisions of federal or Illinois branch banking law."

Your letter then states:

> "Therefore, I respectfully request you review the Deputy Comptroller's letter as submitted to this office and advise me what, if any, effect the Deputy Comptroller's statements and interpretation would have on the opinion issued by the previous Attorney General dated November 22, 1968 (File UP-2036)."

After careful consideration of the authorities referred to by the Deputy Comptroller of the Currency and such other matters as are deemed relevant, I find that I must respectfully decline to concur in the opinion expressed in his letter.

The opinion of my predecessor dated November 22, 1968, to which you refer, holds that a "loan production office" of the type under consideration here may not be maintained by a state-chartered bank and refers to certain provisions of the Illinois Banking Act. I am in agreement with the reasoning of that opinion, but it is not entirely germane here since your inquiry deals with a national bank.

In First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969), the Supreme Court of the United States construed section 7 of the McFadden Act (12 U.S.C., §36) to mean that while a national bank may not have branches in locations prohibited to state-chartered banks, the determination of what constitutes a branch of a national bank is a matter of Federal law. The provision of Federal statutory law which is controlling is found in 12 U.S.C., §36(f):

> "(f). The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office or any place of business . . . at which deposits are received, or checks paid, or money lent." (Emphasis added)

This may be compared with the similar provision found in Section 2 of the Illinois Banking Act, which reads in part as follows:

> "§2. * * *
> A 'banking house', 'branch bank', 'branch office' or 'additional office or agency' * * * shall include any branch bank, branch office or additional house, office, agency or place of business at which deposits are received or checks paid, or any of a bank's other business is conducted, * * * ." (Emphasis added) Ill. Rev. Stat. 1969, ch. 16 1/2, par. 102.

In commenting on the Federal statute, the Court stated in First National Bank v. Dickinson (supra) that:

> "Although the definition may not be a model of precision, in part due to its circular aspect, it defines the minimum content of the term 'branch'; by use of the word 'include' the definition suggests a calculated indefiniteness with respect to the outer limits of the term. However, the term 'branch' bank at the very least includes any place for receiving deposits or paying checks or lending money apart from the chartered premises; it may include more." (Emphasis added in part). 396 U.S. 122, 135.

To fully understand the thrust of this case, it is necessary to analyze the specific issue there presented to the Court. The First National Bank in Plant City operated an armored-car teller service which cashed checks and received deposits for its commercial customers. In addition there was a stationary depositary located approximately one mile from

the banking premises where deposits could be made which were later picked up by the armored car and transferred to the banking premises where the deposits would be entered. The form of deposit agreement used by the bank specifically provided that the bank, in transferring deposits by armored car, was the agent of the customer and no deposit would be considered made until the deposit was physically received at the bank's premises. In holding that the remote depositary and the armored-car service constituted an illegal branch under the terms of Federal law, the Supreme Court stated:

> "Because the purpose of the statute [12 U.S.C., §36] is to maintain competitive equality, it is relevant in construing 'branch' to consider, not merely the contractual rights and liabilities created by the transaction, but all those aspects of the transaction that might give the bank an advantage in its competition for customers. * * *
>
> "Here we are confronted by a systematic attempt to secure for national banks branching privileges which Florida denies to competing state banks. The utility of the armored car service and deposit receptacle are obvious; many States permit state chartered banks to use this eminently sensible mode of operations, but Florida's policy is not open to judicial review any more than is

> the congressional policy of 'competitive equality.' Nor is the congressional policy of competitive equality with its deference to state standards open to modification by the Comptroller of the Currency." 396 U.S. 122, 136-138.

In considering the nature of the operation of a loan solicitation office in order to see whether such an office is a place where there is "money lent" and therefore whether it falls within the clear definition of "branch" under Federal law, it is useful to consider the overall procedure of extension of credit rather than merely confining oneself to the moment in time and place where the loan is formally approved or the proceeds disbursed. The process of lending and borrowing includes solicitation, application, investigation, taking of security, approval and disbursement together with servicing and collection. To the individual borrower, the location of the office of the lender from which the check representing the loan proceeds is mailed is immaterial; the factor that gives the lender a competitive advantage is convenience in making the loan application. To hold to a narrow technical meaning of the concept of a place where "money [is] lent" as is done

by the Office of the Comptroller of the Currency is to fly in the face of the congressional policy of competitive equality and the United States Supreme Court's determination to respect that policy as enunciated in First National Bank v. Dickinson, (supra).

It should also be noted in passing that the fact that the corporation referred to in the Comptroller's letter is a wholly owned subsidiary of the national bank rather than a separate office of the bank is not relevant. In Jackson v. First National Bank of Gainesville (430 F.2d 1200), the United States Court of Appeals for the Fifth Circuit held that a national bank could not defeat a prohibition against the operation of an armored-car teller service by transferring the operation to a separate corporation which then became a subsidiary of a one-bank holding company.

In light of the points discussed above, I am of the opinion that a national banking association having its office in Illinois may not operate a loan solicitation office without violating the Federal law with respect to branch banking. The

opinion of my predecessor that such a prohibition applies to state chartered banks is fully concurred in.

Very truly yours,

A T T O R N E Y G E N E R A L