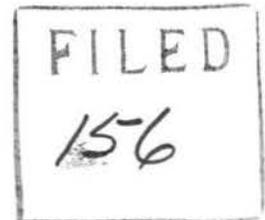


BANKS:

For the purposes of Section 362.107.2(4), RSMo Supp. 1971, which establishes a minimum distance between a drive-in facility of a bank and a main banking house of another banking institution, the distance between the bank facility and the competing main banking house should be measured along the shortest and straight line from the building of the main banking house devoted to banking activity to the building of the facility devoted to the banking activities permitted to be conducted at a facility.

OPINION NO. 156

June 30, 1972



Mr. H. Duane Pemberton
Commissioner of Finance
Division of Finance
Post Office Box 716
Jefferson City, Missouri 65101

Dear Mr. Pemberton:

This is in response to your request for an opinion on the following question:

"Section 362.107 . . . sets the limitation of 400 feet between a bank's facility and the competing bank. The question is does the measurement of 400 feet go from property lines to the closest point of property line of the competing bank, or does it mean building to building?"

Section 362.107.2(4),* RSMo Supp. 1971, provides:

"No such bank or trust company may maintain or operate:

* * *

(4) Such facility located closer than four hundred feet to the main banking house of another then existing banking institution . . ."

*House Bill No. 1062, Second Regular Session, 76th General Assembly, which has been passed by the General Assembly and signed by the Governor is scheduled to take effect August 13, 1972. While that will change some language of Section 362.107, RSMo Supp. 1971, it does not affect this opinion.

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We have found no cases from Missouri or other jurisdictions directly in point with respect to measuring distance between banking locations. This office has held that the measurement of distance with respect to the banking laws is by a straight line. Opinion No. 394, Pemberton, August 19, 1971.

From the use of the words "banking house" in Section 362.107.2 (4), we are of the opinion that the starting point for measurement of the four hundred feet limit as set out in that section should be the portion of the building used as the main banking house of the existing bank, and not the property line of the real estate on which the banking house is located. For reasons which will be discussed, we are of the opinion that the measurement line should terminate at the portion of the building used to house the facility, and not the property line of the real estate on which such building is located.

Commonly a facility will offer parking space to customers utilizing the facility. While it could be argued that such parking space is an integral part of the facility and should be included in measuring the distance between the facility and a competing main banking house, we believe that by the use of the word facility in Section 362.107 the legislature had reference only to the actual premises at which certain banking transactions are expressly permitted by Section 362.107 to be performed and not to surrounding parking lots or other real property and premises. Supporting this conclusion is a New York case, Long Island National Bank v. Superintendent of Banks, 290 N.Y.S.2d 820, 823 (1967). There it was contended, by the bank objecting to the approval of a competing bank's branch bank application by the New York superintendent of banks, that the branch was in Hicksville rather than Jericho, as the superintendent had found, because the bank's parking lot was in Hicksville. The court rejected the contention that the location of the parking lot was controlling; holding:

"Nor does the fact that the parking area for the proposed branch bank building is located south of the line of demarcation between Jericho and Hicksville, and, therefore, in Hicksville, require a holding that the branch office itself is located in Hicksville. A place of business is to be differentiated from the parking area provided for its patrons and may be, as it often is, some distance away from the parking area, with property owned by others in between."

We believe the same reasoning is applicable to the present opinion. The fact that land or property surrounding the facility

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is devoted to uses such as parking areas for bank customers, other than the banking transactions performed at the facility dictates such land or property, either surrounding the facility or apart from the facility, should not be considered a part of the facility in measuring distance between the facility and the main banking house of a competing bank. This approach is consistent with the opinions this office has issued concerning measurement of distance between a school or church and an establishment selling liquor-by-the-drink. See, Opinion No. 10, Bowers, January 17, 1938, and Opinion No. 22, Dempster, September 22, 1953.

CONCLUSION

It is the opinion of this office that for the purposes of Section 362.107.2(4), RSMo Supp. 1971, which establishes a minimum distance between a drive-in facility of a bank and a main banking house of another banking institution, the distance between the bank facility and the competing main banking house should be measured along the shortest and straight line from the building of the main banking house devoted to the banking activity to the building of the facility devoted to the banking activities permitted to be conducted at a facility.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Charles A. Blackmar.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 394
8-19-71, Pemberton

Op. No. 10
1-17-38, Bowers

Op. No. 22
9-22-53, Dempster