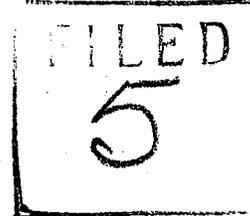


Banking: Maximum property lines of both the main banking house, and the facility to be established by authority found in House Bill No. 568, passed by the 70th General Assembly of Missouri, are to be used as termini in measuring the one thousand yards distance beyond which the authorized facility may not be separated from the main banking house.

June 13, 1960



Honorable G. H. Bates
Commissioner of Finance
Jefferson Building
Jefferson City, Missouri

Dear Mr. Bates:

This opinion is in answer to your recent inquiry reading as follows:

"House Bill #568, passed by the 70th General Assembly provides that a 'facility' may be located not more than one thousand yards from the banking house.

"In measuring the one thousand yards is it permissible under the law to take into consideration maximum property lines of the plots on which are located the main banking house, as well as the main structure within the facility, or is the measurement to be from the main banking house to the main structure on the facility?"

House Bill No. 568, passed by the 70th General Assembly of Missouri is now found at Section 362.107 V.A.M.S., and reads as follows:

"1. Purpose of the section. It is in the public interest that banking institutions be permitted to provide convenient banking service for the large proportion of people who must come to their banks by automobile. In many communities banking institutions are so located as to prevent the establishment of convenient

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facilities for automobile banking at locations attached to or immediately adjacent to their banking house. It is therefore in the interest of all the general public that banking institutions be permitted to provide automobile banking service at one conveniently located facility, separate and apart from its banking house.

"2. (1) Anything in sections 362.105 or 363.170, RSMo, or in any other law of this state to the contrary notwithstanding, every bank and every trust company organized under the laws of this state which has the corporate power to receive deposits shall have the right to, and may, upon compliance with this section, maintain and operate separate and apart from its banking house one facility for drive-in and walk-up service, whereat checks may be paid, deposits received, deposits withdrawn and change made only.

(2) No such bank or trust company may maintain or operate

(a) More than one such facility either attached to or separate and apart from its banking house at the same time excepting facilities required by the United States Government to be maintained by it as financial agent of the government on government reservations solely for military and other government personnel, provided however that nothing in this section shall be construed to authorize any bank or trust company organized under the laws of this state to establish or maintain such facilities as financial agent of the government on government reservations; or

(b) Such a facility located more than one thousand yards from its banking house; or

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(c) Such a facility outside the limits of the city, town, or village or unincorporated community in which its banking house is located; or

(d) Such facility located closer than four hundred feet to the main banking house of another then existing banking institution unless such facility shall be located closer to the main banking house of the banking institution operating such facility than it is to the main banking house of any other then existing banking institution, or unless such banking institutions affected shall consent thereto in writing.

(e) Such facility separate and apart from its banking house without having first obtained the approval of the commissioner of finance of the state of Missouri.

(3) Whenever any such bank or trust company desires to maintain and operate a facility separate and apart from its banking house, pursuant to this section, or to move a facility previously established under this section to another location, it shall apply to the commissioner of finance for such authority and provide the commissioner with such relevant information as he may reasonably request. In determining whether or not to approve the application for such facility, the commissioner shall take into consideration the following facts:

(a) The convenience, needs and welfare of the people of the community and area served.

(b) The financial strength of the banking institution making application for such facility in relation to the cost of establishing and maintaining such facility.

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(c) Whether other banking institutions will be seriously injured by the approval of the application for such facility at the location specified.

(4) If said commissioner of finance be not satisfied and shall deny the application, the action of said commissioner in granting or denying any such application may be appealed from and be reviewed in the same manner as action by him pursuant to section 362.040, RSMo, may be appealed from and reviewed.

(5) Nothing in this section contained shall be deemed to authorize the maintenance or operation of a branch bank or a branch trust company in contravention of the prohibition contained in sections 362.105 and 363.170, RSMo.

(6) National banking associations located in this state shall have the same, but no greater right under or by virtue of this section as banks and trust companies organized under the laws of this state."

Language contained in the statute just quoted discloses that the new law authorizes a "facility for drive-in and walk-up service." The statute does not describe the physical character to be assumed by the facility, nor does it prescribe a rule for measuring the distance of one thousand yards or the four hundred feet mentioned in the statute. The statute merely prohibits location of the facility "more than one thousand yards from its banking house."

When we note that the terms "main banking house of the banking institution" and "facility for drive-in and walk-up service" are nowhere described or defined in Section 362.107, supra, a common sense approach will have to be made in light of the purpose of the law.

Now, in order to do violence to the purpose of the law, one would have to establish a facility at a point more than one thousand yards from the main banking house. Of course,

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a facility must comprehend all of its physical attributes without which it could not become an operational facility. The plots on which the facility, as well as the main banking house, are located would seem to constitute two areas vital to establishment of the facility.

If we do not let these two major factors (sites) form the termini for measuring the one thousand yards distance, we close our eyes to the fact that a part of a whole is to be ignored in determining the true character of two separate whole parts--the main banking house, and the facility to be established.

We see no apparent danger in employing maximum property lines as termini when measuring the one thousand yards distance to be maintained between the main banking house and the facility to be established, and such construction of language used in the statute avoids a strained construction of words employed, effects reasonableness and promotes the main purpose of the legislation without giving rise to hypertechnical problems which could be involved if any other course were taken.

CONCLUSION

It is the opinion of this office that maximum property lines of both the main banking house, and the facility to be established by authority found in House Bill No. 568, passed by the 70th General Assembly of Missouri, are to be used as termini in measuring the one thousand yards distance beyond which the authorized facility may not be separated from the main banking house.

The foregoing opinion which I hereby approve was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO'M:gm