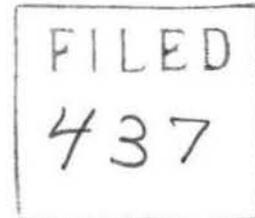


BANKS:

The designation of the Grandview Bank as a federal depository and financial agent pursuant to federal law to perform functions designated by the Secretary of the Treasury is a matter controlled by federal law and permission to establish this facility is not necessary from the Division of Finance of the State of Missouri. The establishment of this facility, therefore, is dependent upon appropriate decision by the federal authority and the Missouri prohibition against branch banking is not applicable.

OPINION NO. 437

August 31, 1970



Mr. John W. Ridgeway
Deputy Commissioner
Division of Finance
Department of Business
and Administration
12th Floor Jefferson Building
Jefferson City, Missouri 65101

Dear Mr. Ridgeway:

This official opinion is in response to your recent request for a ruling with respect to the facts and questions set forth as follows:

"The Division of Finance is in receipt by the Grandview Bank of Grandview, Missouri, a state bank, for permission to establish and operate a facility on a military reservation at Richards-Gebaur Air Force Base. The Grandview Bank must also seek permission from the appropriate federal agencies to establish this facility. However, should our division authorize the establishment of such a facility in view of the Missouri prohibition against branch banking?"

Although not stated in your opinion request, we assume that the bank in question would operate a facility on the military reservation only after being so designated by the federal government

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under the terms of Title 12, U.S.C.A., Section 265, which provides in part:

"All insured banks designated for that purpose by the Secretary of the Treasury shall be depositories of public money of the United States . . . and the Secretary is hereby authorized to deposit public money in such depositories, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositories of public money and financial agents of the Government as may be required of them. . . ."

The Missouri prohibition against branch banking to which you refer in your opinion request is contained in Section 362.105, RSMo 1969, which provides as follows:

"Powers and authority of banks and trust companies.--1. Every bank and trust company created under the laws of this state may:

"(1) . . . provided, however, that no bank or trust company shall maintain in this state a branch bank or trust company, or receive deposits or pay checks except in its own banking house. . . ."

Assuming that the installation contemplated by the Grandview Bank, a state bank, would constitute the establishment of a branch bank under the Missouri law, the question is whether the prohibition against branch banking applies in this situation.

The question has been ruled upon in State of Texas ex rel. Falkner v. National Bank of Commerce of San Antonio, 290 F.2d 229 (5th Cir., Tex., 1961), cert. den. 368 U.S. 832, 7 L.Ed.2d 35, 82 S.Ct. 55 (1961).

There, the State of Texas contended that the Texas prohibition against branch banking prohibited the establishment of a branch of a national bank upon a military reservation. Resolving this question, the court stated:

"For almost two decades, limited banking facilities have been operated at various military installations by national bank-

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ing associations and by state banks; those facilities have been under the direction of the Secretary of the Treasury and are operated as agents of the federal government. They are designated as depositories and financial agents of the United States under 12 U.S.C.A. §90, if national banks and under 12 U.S.C.A. §265, if banks insured by the Federal Deposit Insurance Corporation. Each bank so designated is authorized to perform only those functions enumerated in the letter granting it authority to act. . . ." loc. cit. 290 F.2d 229, 231.

The court further held that the federal policy as set forth in 12 U.S.C.A., Section 36(c) which provides that national banking association may establish new branches in certain circumstances "subject to the restrictions as to location imposed by the law of the State on State's banks. . . ." does not restrict the power of the appropriate federal agency to establish a facility on a military reservation pursuant to 12 U.S.C.A., Section 90. The court viewed the restrictions with regard to branch banking as not applicable to the provisions permitting the designation of federal depositories or financial agents.

Congressional power to establish depositories and financial agents without regard to the branch banking statutes would extend under 12 U.S.C.A., Section 265 to state banks like the Grandview Bank. In discussing this congressional power the court stated:

"Conceding, as we must, that Congress has the power to determine the conditions under which national banking associations shall operate, the power of Congress to enact such legislation cannot seriously be questioned. The section before us gives the Secretary of the Treasury the power to employ as government financial agents any national banking association, and, having designated a banking association so to act, the Secretary may demand that it perform all such 'reasonable duties' as may be required of it. Clearly this is what the Secretary has done in the present case. . . ." loc. cit. 290 F.2d 229, 233.

In performing the functions designated by the Secretary of the

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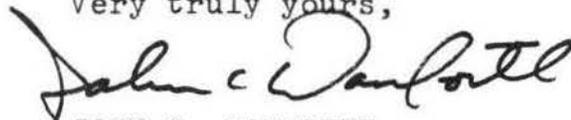
Treasury, the Grandview Bank would be performing a federal function and the federal law as set forth in State of Texas v. National Bank of Commerce of San Antonio, supra, controls.

CONCLUSION

It is therefore the opinion of this office that the designation of the Grandview Bank as a federal depository and financial agent pursuant to federal law to perform functions designated by the Secretary of the Treasury is a matter controlled by federal law and that permission to establish this facility is not necessary from the Division of Finance of the State of Missouri. The establishment of this facility, therefore, is dependent upon appropriate decision by the federal authority and the Missouri prohibition against branch banking is not applicable.

The above opinion, which I hereby approve, was prepared by my Assistant, John C. Craft.

Very truly yours,

A handwritten signature in cursive script that reads "John C. Danforth". The signature is written in dark ink and is positioned above the printed name and title.

JOHN C. DANFORTH
Attorney General