BANKS-BRANCH BANKING: A bank is not carrying on branch banking by installing a pneumatic tube on a parking lot owned by the bank and across the street from its banking house for the purpost of allowing customers of the bank to place funds in said pneumatic tube to be carried underneath the street and up into the bank where such funds are deposited.

March 30, 1949

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Honorable H. G. Shaffner
Commissioner of the Division of Finance
of the State of Missouri
Jefferson City, Missouri

Dear Commissioner Shaffner:

This will acknowledge the receipt of your letter of recent date requesting an opinion from this Department, whether the Inter-State National Bank of Kansas City, Missouri, would be considered to be carrying on branch banking by installing a pneumatic tube on a parking lot owned by the bank and lying directly across Genesee Street in Kansas City, Missouri, from the banking house of the bank, said pneumatic tube to pass under Genesee Street and extend on up into the banking quarters of the bank, for the purpose and practice of permitting the bank's customers to drive upon said parking lot and deposit money, or the equivalent of money as deposits, in such pneumatic tube for passage through said tube into the bank. Your letter requesting the opinion of this Department on the question is as follows:

> "I am advised by letter that the Inter-State National Bank of Kansas City, Missouri, has their banking quarters at 1600 Genesee Street, Kansas City, Missouri; that it owns a parking lot directly across from the bank, where its customers can park in doing business with the bank.
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> "As a convenience to its customers the bank desires to install a pneumatic tube on the parking lot, which tube will pass under Genesee Street and extend on up into the banking quarters. The bank's customers will then be able

> to place their deposits in such pneumatic tube for passage into the bank, without the necessity of having to park their cars and enter the bank.
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> "Kindly render a written opinion whether or not this practice could in any way be considered branch banking."

Section 7949, Mo. R.S.A. 1939, defines the powers of banks. The proviso in paragraph 1 in said section states:

> "Provided, however, that no bank shall maintain in this state a branch bank, or receive deposits or pay checks except in its own banking house."

The purpose of the bank named in your letter apparently is not to attempt to carry on branch banking, but, on the other hand, to avoid the doing of any act which might be classified or defined as branch banking. However, in arriving at a logical and intelligible conclusion in an opinion on the subject, it is not inappropriate, we think, to comment upon the facts and cite excerpts from the opinions rendered by our Courts defining branch banking, because the making of deposits and the places where such deposits are made by the depositors and received by a bank contrary to the terms of said proviso become the very essence of branch banking. The Supreme Court of this State, and our St. Louis Court of Appeals both hold that receiving deposits in violation of said proviso in said Section 7949 constitutes branch banking and such acts being expressly prohibited by the statutes are ultra vires, and render the corporation subject to ouster by writ of quo warranto by the State, but in so far as receiving deposits at places other than at the banking house of a bank are concerned, as between a bank and its depositors, such acts, while ultra vires, are not void, but voidable only, with respect to their contractual relationship. The question of what constitutes branch banking, and the effects of branch banking, if carried on, was before the St. Louis Court of Appeals in the case

of Wellston Trust Co. vs. American Surety Co. of New York, reported in 14 S.W. (2d) 23. That was a suit on an insurance policy issued by the surety company to indemnify the trust company against loss of money by theft, burglary or robbery. The facts in the case were that the trust company had followed for a period of more than one year and a half the practice of its officers and agents going to the place of business of one of its customers to receive the customer's deposits, there make an entry of the amount of the deposit in the customer's bank book and then transport the money to the bank, a distance of several blocks away. The treasurer of the trust company and an attendant went to the office of the customer on the occasion of the loss of the money and received the money of the depositor, amounting to approximately $4,000.00 as a deposit, entered the items making up the total sum in the customer's pass book, issued a duplicate deposit slip and started back to the bank with the money in an automobile, and, while so engaged in transporting the money to the bank the officer of the bank and the attendant were held up and the money was taken from them by the robbers. On the next day the bank entered the deposit on its books to the credit of the customer in the amount received by its agents and afterwards paid out that amount on the depositor's checks. Suit was brought by the trust company, or bank, against the surety company on its policy for the loss of the money. The surety company defended on the ground that the officer of the bank and the attendant were agents of the customer who made the deposit and not of the bank, and that, therefore, there was no liability to the bank under the policy because the loss was not covered by the policy, and that in any event, the acts of the bank in receiving the deposits away from the banking house were ultra vires and void and not to be anticipated by the contract or covered by the terms of the policy. The St. Louis Court of Appeals overruled the contentions of the surety company and held that the surety company was liable under the policy. The surety company took the case by a writ of certiorari to the Supreme Court where it is reported in 30 S.W. (2d) 100, and is titled State ex rel. American Surety Company of New York vs. Haid, et al. The contention of the surety company was that the decision of the St. Louis Court of Appeals was in conflict with previous controlling decisions by the Supreme Court. The Supreme Court held that there was no conflict between

the opinion of the Court of Appeals and the decisions of the Supreme Court. On this point Judge Ellison, as Commissioner, in rendering the opinion in the Supreme Court, l.c. 103, said:

> "We are not at liberty to inquire into the correctness of the Court of Appeals' construction of section 11799, Rev. St. Mo. 1919, holding the statute did not render void the act of the Wellston Trust Company in receiving the deposit of the People's Motorbus Company at the latter's office. Our sole province is to ascertain whether the opinion conflicts with previous controlling decisions of this court. * * * ."

The Supreme Court in the same case, same page, farther along in the same paragraph said:

> "* * * The only Supreme Court case cited, or ever decided so far as we are advised, bearing on that part of the statute, is State ex rel. Barrett v. First Nat'l Bank, supra, 297 Mo. 397, 249 S.W. 619, 30 A.L.R. 918, which holds that under the companion section 11737, national banks have no authority to maintain branch banks in this state--a very different thing. But the relator contends the opinion contravenes general principles announced in other cases and apposite rulings based on similar facts."

The Supreme Court case referred to by Judge Ellison concerns the establishment by national banks of branch banks in this State. It involved the construction of Section 11737, R.S. Mo. 1919.

The provisions of Section 11737, R.S. Mo. 1919, which were, as to the point in interest here, the same provisions as are contained in our present Section 7949, supra, and the interpretation of the meaning of the National Banking Act concerning the establishing of branch banks, as related to said Section 11737, R.S. Mo. 1919, were before our Supreme Court in the case of State ex rel. Barrett vs. First National Bank of St. Louis, 297 Mo. 397. A national bank had established a branch bank in St. Louis, Missouri. Its power to do so was challenged by the Attorney General of this State in an ouster proceeding in quo warranto. Our Supreme Court held that national banks could not establish

branch banks in States which have not granted such power, and restated the same rule in the State vs. Haid, et al. case, supra, saying that any attempt of National banks to establish branch banks in this State was not only an act in excess of their corporate powers, because not permitted by this State, but was in violation of an express statute.

The Court in the same case, in holding that the opinion by the St. Louis Court of Appeals, 14 S.W. (2d) 23, (the case there being reviewed by the Supreme Court) was not in conflict with the Barrett case, l.c. 104, further said:

> "Without continuing this abstract discussion further, our conclusion is that the mere presence in the statute, section 11799, Rev. St.Mo. 1919, of the proviso forbidding a trust company from maintaining a branch trust office and from receiving deposits except at its own banking house, did not of itself render void the particular transaction complained of in this case by reason of any general or fixed principle of statutory construction announced by the controlling decisions of this court; that many things beside the mere letter of a statute may enter into its construction, these varying with the particular legislation considered; and that no decision cited by the relator can be said to be based on facts so similar to those presented by this record as to make the respondents' opinion conflict therewith."

This left the opinion rendered by the Court of Appeals, 14 S.W. (2d) 23, undisturbed and decisive of the case. The St. Louis Court of Appeals in the Surety Company case, supra, held that while the reception of the customer's money by the agents away from the bank was ultra vires, it did not constitute grounds for avoiding payment of damages under its policy to the amount of the deposit made. The Court, l.c. 28, said:

> "We have examined the cases relied on by defendant with respect to this point, and find the principle announced therein inapplicable in the present case. The act of the plaintiff in receiving the deposits of the motorbus company outside the banking house, though ultra vires and in contravention of the statute, was not malum in se, nor criminal, nor did it affect the public morals. * * * ."

These quotations and the discussions by the Courts of the issues in the cases from which the citations are taken, are conclusive as to the construction the Courts have given the proviso of paragraph 1 of said Section 7949. We think they will be helpful to us here in determining if the proposed plan of allowing patrons of the bank to place money or its equivalent in the pneumatic tube to be constructed by the bank on its parking lot to be delivered within the bank's building across the street to be there received by the bank as deposits, amounts to branch banking or not.

Sub-section 5 of said Section 7949, giving banks the right to purchase real estate and with respect to what shall constitute the banking house or place of business of a bank states the following:

> "(a) A plot whereon there is or may be erected a building or buildings suitable for the convenient transaction of its business from portions of which not required for its own use a revenue may be derived."

The Inter-State National Bank of Kansas City, Missouri, does have such a business building on its own plot of ground on one side of Genesee Street in said city. The bank also owns a lot on the opposite side of said street, directly across from its banking house, for a parking lot for the convenience and assistance of its customers who drive automobiles to the parking lot to more readily transact their various items of business with the bank. This, we think, would be permissible and authorized by the terms of Section 5, Article XI of the Constitution of this State, 1945, because

holding and use of real estate adjoining the banking house lot for the use and benefit of the bank's customers may well be considered necessary and proper for carrying on the bank's legitimate business. It appears that the installation of the pneumatic tube between the parking lot and the bank building itself, to convey funds into the bank, is for the purpose of relieving customers who park their cars at the parking lot, from the necessity of proceeding therefrom across the street and back again to their cars, is for the accommodation of and benefit to the patrons of the bank and is an aid to the bank for the convenient transaction of its business.

The bank owns both the plot of ground upon which the bank building is erected and the parking lot on the opposite side of the street to the center of the street. We do not believe that it may be successfully controverted that the bank would have the authority and power, in making available such accommodation to its customers, to construct underneath the surface of the street, or above the surface of the street, which would not interfere with the use of the street by the public, any structure it needs for the use and benefit of its customers and which would aid the bank in its lawful business, since the city has an easement only in the use of the street and holds the title to the real estate constituting the street in trust only for the public, regardless of whether the dedication of real estate for street purposes was under the common law or under the statute, for the use thereof by the public for travel, the construction and laying of water mains or other instrumentalities underneath the surface of the street for the public health and safety. There are many decisions by the Supreme Court of this State to that effect. Our statutes so state. We do not deem it needful or proper to here quote authorities on this principle. One interested, however, will find the law so stated in Section 12809, R.S. Mo. 1939; Thomas vs. Hunt, 134 Mo. Rep. 392, l.c. 399; Snoddy vs. Bolen, 122 Mo. Rep. 479, l.c. 485; Ashurst vs. Lohoefner, 170 Mo. App. Rep. 327, l.c. 331.

Our Courts have said that one place or building for carrying on the business of a bank is required, in order to localize and stabilize the banking business and to

prevent the banking business from becoming a monopoly and from stifling competition in any community where branch banking would allow a bank to so extend its business and multiply its places of business as to result in potential destruction of competition.

Branch banking is not carried on, we think, by a bank where all the acts of making a deposit of money are transacted in the banking house except the initial step such as is proposed here by placing money in a pneumatic tube located on another plot of ground owned by the bank and immediately adjoining the banking house lot at the center of the street to be conveyed through said tube into the banking house for deposit.

The money, or its equivalent, placed in the pneumatic tube, as proposed here to be done, would pass directly and immediately to the inside of the bank and would not be in the custody of any person whomsoever until it reached the counters of the bank inside the bank building. There would be no duplicate deposit slip made, no entering of the deposit upon the books of the bank, no calculating or summing up of the amount or value of the deposit until it reaches the hands of the employees of the bank inside the bank building. The money, or its equivalent, then, we believe, would not, and could not, become a deposit until it was in the custody and control of the bank officials or employees in the bank building itself, and a record made thereof. Volume 7, C.J., page 637, states the following text on what constitutes a deposit, to-wit:

> "A deposit is complete when the money passes from the possession of the depositor into the possession of an agent of the bank, within the bank, and during banking hours. * * * ."

It appears to be the same situation here as if a customer of the bank, desiring to make a deposit of funds in the bank should drive upon the parking lot named, and possessing some means of reaching over the surface of the street so that no interference with the use of the street would occur, should hand his money to an official of the bank through an open window or an open door, or the depositor should stand on the parking lot and toss his

deposit across the street into an open window or door of the bank, or that the bank, without interfering with any rights of the public or individuals, should construct a crossing above the street from the parking lot to the bank building in which a device which, for the want of a better designation, we will call a trolley basket, such as are used by clerks in stores to convey a purchaser's money to the cashier, and, in turn, the customer's change is conveyed back by the same means to the clerk for the customer, and such device would be used by a customer to convey money into the bank for deposit. Could such deposits, effectuated by such instrumentalities, be called branch banking? We think not.

It is common knowledge that people from great distances from a bank, desiring to deposit their funds in the bank, use the United States mails to convey the deposit by letter to the banking officials at the bank's place of business. Messengers carrying money are constantly being sent from distant places by persons who wish to make deposits in a bank to convey their funds to the bank. Automobiles, armored trucks, aviation, and shipping facilities are used as instrumentalities to convey money to banks for deposit but the property conveyed does not become a deposit until it reaches the officials of the bank in the banking house and no person, we believe, could say that branch banking would be carried on by reason the use of any of these methods of conveying money to a bank for deposit.

Upon what ground would the distinction rest between any of the instrumentalities hereinabove named, and commonly used as methods of conveying money to a bank for deposit, and the proposed plan here devised for the accommodation of a customer to place his deposit while on the parking lot of the bank in the pneumatic tube to be conveyed into the bank itself for the purpose of making a deposit of funds, to say that the one is branch banking, the other not branch banking? We think there are no such grounds for such distinction. None of them constitute branch banking.

Considering what our Courts have said, to the effect that branch banking, in so far as the incident of making a deposit is concerned, is receiving deposits outside of and away from the banking house, as expressed in the above citations, and considering further that the use of the parking lot, owned by the bank, for the installation of the pneumatic tube for the reception of money of customers to be deposited within the

bank and also as a convenience and necessity of the bank itself in carrying on its business, we believe that neither this enterprise, nor the methods used in utilizing it by customers of the bank to make their deposits, constitutes branch banking.

CONCLUSION

It is, therefore, the opinion of this department, considering the above cited and discussed authorities, and considering the fact that the use of the pneumatic tube to convey funds of customers from its adjoining lot across the street to the bank to become deposits in the bank, the use of which may very well be said to be a necessity and proper, not only as an accommodation to the customers of the bank, but for the convenient transaction of the business of the bank itself, it will not constitute branch banking for the Inter-State National Bank of Kansas City, Missouri, to install a pneumatic tube on a parking lot owned by the bank and situated directly across the street from the bank, which will pass under a public street and extend on up into the banking quarters where the funds of the customer would be delivered into the hands of the officers and employees of the bank within the banking house itself for deposit.

Respectfully submitted,

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APPROVED:

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