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BANKS AND BANKING:
Branch Banking

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Springfield, Illinois 62701

Dear Mr. Lignoul:

I have your letter asking whether the establishment of a "business service office" by the American National Bank & Trust Company of Chicago in suburban Elk Grove Village constitutes a violation of the Illinois Banking Act. (Ill. Rev. Stat. 1973, ch. 15 1/2, para. 23.1 et seq.) As I understand it, such an office is designed to provide commercial banking services to business customers only. According to the letter submitted by Mr. Ronald Grayheck, Executive Vice President of American

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National, the office is not to be operated as a "loan production facility". Rather its function is to market non-loan services such as cash management and investment counseling, financial forecasting and a broad range of financial services. Mr. Grayheck has also stated, however, that the Elk Grove Village facility "undoubtedly" will generate some loan requests which will be accepted at that office.

Section 6 of the Illinois Banking Act (Ill. Rev. Stat. 1973, ch. 16 1/2, par. 106) prohibits branch banking in the State. This provision states:

"§ 6. Branch Banking Prohibited.) No bank shall establish or maintain more than one banking house, or receive deposits or pay checks at any other place than such banking house, and no bank shall establish or maintain in this or any other state of the United States any branch bank, nor shall it establish or maintain in this State any branch office or additional office or agency for the purpose of conducting any of its business."

Branch banking is defined in section 2 of the Illinois Banking Act (Ill. Rev. Stat. 1973, ch. 16 1/2, par. 102) as follows:

"

* * *

A 'banking house', 'branch bank', 'branch office' or 'additional office or agency' within the meaning of the prohibitions of Section 6

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hereof 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 * * * "

It is clear that a business service office as described above is established for the purpose of conducting some of the bank's business. As such, it constitutes a branch office as defined in section 2 of the Illinois Banking Act and its operation by a State chartered bank would be in direct violation of section 6 of the Act. Because American National Bank & Trust Company is a national bank however, somewhat different considerations are involved.

The authority of a national bank to establish branch offices is set forth in the McFadden Act (12 U.S.C., sec. 36(c)):

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: * * * at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks * * * "

In First National Bank of Logan v. Walker Bank & Trust Company, 385 U.S. 252 (1966) at page 261, Justice Clark,

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writing for a unanimous court, found in this provision a legislative intent "to place national and State banks on a basis of 'competitive equality' insofar as branch banking was concerned". Thus, national banks may establish branch offices only to the extent State law permits State banks to do so.

Three years later the Supreme Court was again confronted with a case involving a national bank and branch banking in First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969). The court began by reaffirming its holding in Walker Bank concerning the importance of competitive equality, but it went on to say that the determination of what constitutes a branch of a national bank is a Federal question.

The Federal definition of "branch" is to be found in the McFadden Act (12 U.S.C., sec. 36(f)) which states:

"(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 branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."

Commenting on this definition, the court said in Dickinson at page 135 that:

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"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. * * * "

Recent decisions in the lower Federal courts have acknowledged this "calculated indefiniteness" and have rejected any attempt to arrive at a strict technical definition of "branch" as used in section 36(f). Rather, it has been the policy of the Federal courts to approach this problem on a case by case basis, taking into consideration all those factors that appear to be relevant in light of the underlying concern for promoting "competitive equality". See, e.g. Commonwealth of Va. ex rel. Corp. C. v. Farmers & M. Nat. Bk., 380 F. Supp. 568 (W.D. Va. 1974); Dunn v. First National Bank of Cartersville, 345 F. Supp. 853 (N.D. Ga. 1972); Jackson v. First National Bank of Valdosta, 246 F. Supp. 134 (M.D. Ga. 1955); and North Davis Bank v. First National Bank of Layton, 457 F. 2d 820 (10th Cir. 1972).

In the present case, the most obvious question is

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whether or not the business service office constitutes a place where "money is lent" so as to fall squarely within the "minimum" definition of "branch" suggested in Dickinson. Mr. Ronald Grayheck, American National's Executive Vice President, and Mr. Allen Stults, the bank's chairman, have both indicated that no disbursement of loan funds will be made at American National's Elk Grove Village office. In an opinion published three years ago, however, I clearly indicated that this was not necessarily a decisive factor in applying the phrase "money lent" as used in section 36(f). I stated at that time that:

"* * * [I]t 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' * * * is to fly in the face of competitive equality and the United States Supreme Court's determination to respect that policy as enunciated in Walker Trust and Dickinson." (1972 Ill. Att'y. Gen. Op. 227.)

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In that earlier opinion I was concerned with a so-called "loan production office", the avowed purpose of which was to consist primarily of soliciting new loans and collecting delinquent payments. American National officers, on the other hand, point out that their Elk Grove Village facility is not intended to be such a loan production office. They say rather that the bank's objective in opening the office is simply to market "non-loan business services".

American National officers also acknowledge, however, that the business service office will undoubtedly generate loan requests which will be accepted there, and this is, in my opinion, a decisive factor. As I noted in my 1972 opinion, it is not important to the individual customer of a facility such as the business service office that the actual loan check is mailed from a different location. The factor of overriding significance to the borrower is convenience in making the original loan application and it is this factor that gives the Elk Grove Village office its competitive advantage. By opening such an office in an area of potential industrial growth, American National is necessarily competing with suburban

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banks for expansion opportunities in a manner inconsistent with the concept of competitive equality. See First National Bank of Fairbanks v. Camp, 465 F. 2d 586 (D.C. Cir. 1972).

It is, therefore, my conclusion that a business service office at which loan applications are accepted is a "branch" as defined by section 36(f) and as such, its operation constitutes a violation of section 6 of the Illinois Banking Act.

Very truly yours,

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