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The First National Bank of Logan, of Logan, Utah, A National Banking Association v. Walker Bank & Trust Company, A Corporation : Appellant's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE FIRST NATIONAL BANK OF LOGAN, OF LOGAN, UTAH, a National Banking Association,
Plaintiff-Appellant

vs.

WALKER BANK & TRUST COMPANY, a corporation,
Defendant-Appellee

No. 10621

APPELLANT'S BRIEF

STATEMENT OF THE CASE

This is an action by the Plaintiff to obtain a declaratory judgment that the establishment of two separate offices by the defendant for the receipt of deposits and the paying of checks is not authorized by the Utah Branch Banking Statute.

DISPOSITION IN LOWER COURT

The case was tried to the Court and the Court entered a judgment for the defendant dismissing plaintiff's complaint and holding that the two separate offices were not branches as that term is defined in Utah law.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the judgment and judgment in plaintiff's favor as a matter of law.

STATEMENT OF FACTS

The plaintiff and appellant is a National Banking Association having its main office in Logan City, Utah, located at 99 North Main Street. The defendant is a state bank having its main office in Salt Lake City and a branch bank in Logan, Utah, located at 102 North Main Street, which is directly across the street from the plaintiff, The First National Bank. The First National Bank being located at the Southwest corner and the defendant, Walker Bank's branch, being located at the Northeast corner of the intersection at First North and Main Streets. The First National Bank is the only unit bank in Logan. Walker Bank acquired the Cache Valley Banking Company located at 102 North Main in 1956 by a statutory merger and since that time has conducted a branch banking business at the banking house of the Cache Valley Banking Company. Logan City is a city of the second class. (Tr. 7).

At the time of this action the banking house of Walker Bank's branch was located in the west ninety feet of the building on the Northeast corner of First North and Main Street and Utah Mortgage & Loan Company occupied the east thirty feet. To the east of Utah Mortgage & Loan Company there is a twelve foot right of way for the use of others, and beginning about six feet east of this right of way, Walker Bank has erected two small

buildings. Each building is a separte structure and not physically attached to the banking house of Walker's branch except for a pneumatic tube which runs underneath the ground. Each building has a separate entrance through which the occupants of the building can enter the public street without going into the banking house of the Walker Bank's branch. The two separate buildings will be used for receiving deposits and paying checks for customers of Walker Bank. (Tr. 8).

Neither the Utah State Bank Commissioner nor the Board of Governors of the Federal Reserve System have granted any authority to Walker Bank to operate the proposed facilities for receiving deposits and paying checks.

The Court found that Utah Mortgage & Loan will vacate the premises at or about the time the additional facilities are opened for business, but there is no prohibition against the leasing of these offices to others after the facilities are opened for business.

The street address of the new facilities is 35 East 1st North Street.

ARGUMENT

OTHER THAN THE AUTHORIZATION FOR BRANCH BANKS, THE UTAH LEGISLATURE HAS NOT EXPRESSLY AUTHORIZED THE ESTABLISHMENT BY BANKS OF SEPARATE FACILITIES FOR RECEIVING OF DEPOSITS AND THE PAYING OF CHECKS

a. The Utah Statute on Branch Banking is Restrictive. The theory under which Walker Bank constructed

its additional offices at 35 East 1st North for receiving deposits and cashing checks is that they represent a mere extension or enlargement of the now existing branch banking house and do not constitute the establishment of an additional branch. This is so because the offices will not constitute a separate and independent office operating in the same way as branch banks generally operate. In other words if the bank's records and management are kept at the main banking house, additional stations for receiving deposits and paying checks do not constitute branches under the definition contained in our Utah statute.

Regardless of the distinctions the defendant Walker Bank attempts to make with regard to its denial that its drive-in windows at 35 East 1st North is an additional office for the receiving of deposits and the paying of checks and therefore a branch under our statute, Walker Bank does not deny that two separate buildings exist which were not there when Walker Bank acquired the Cache Valley Banking House in 1956. And Walker Bank admits that these additional offices will be used for the receiving of deposits and the paying of checks.

There is no question as to the definition of a branch bank in Utah law.

> "The term 'branch' as used in this act shall be held to include any branch bank, branch office, branch agency, ADDITIONAL OFFICE, or any branch place of business AT WHICH DEPOSITS ARE RECEIVED OR CHECKS PAID or money lent." (Section 7-3-6, Utah Code Ann. 1953, emphasis mine.)

The Utah Statute also provides: (Section 7-3-6, Utah Code Ann. 1953):

> "The business of every bank shall be conducted only at its banking house and every bank shall receive deposits and pay checks only at its banking house except as hereinafter provided."
>
> "From and after the effective date of this act no unit bank and no branch shall be established or authorized to conduct a banking business except as hereinbefore in Section 7-3-6 expressly provided." (Section 7-3-6.3, Utah Code Ann. 1953.)

It is also undisputed that the only method by which a state bank can branch in Logan is by taking over a unit bank since there is a unit bank located in Logan and Logan is a city of the second class. (See Walker Bank v. Taylor, 15 U. 2d 234, 390 P. 2d 592.)

> In Walker Bank v. Taylor, supra., the Court said: "Our statute is restrictive and, what it does not expressly permit, it prohibits."

In this case the State Bank of Provo established a walk-in branch in Provo and Walker brought an action for declaratory judgment seeking to have such establishment declared illegal and void. The State Bank of Provo did not take over a unit bank in establishing its walk-in branch. The court cited Section 7-3-6, Utah Code Ann. 1953 and stated that:

> "The business of every bank shall be conducted only at its banking house and every bank shall receive deposits and pay checks only at its banking house except as hereinafter provided . .

> "We are of the opinion that our statute is restrictive and, what it does not expressly permit, it prohibits. There is but one method of establishing a branch bank in a city of less than the first class having an existing unit bank and that is by 'taking over' such bank. .
>
> "First of all, it must be conceded that the statute under consideration is not ambiguous. Its literal wording would preclude the Commissioner from granting State Bank of Provo authority to establish the branch . .
>
> "We are not impressed by defendants' argument that the branch banking statute must be interpreted in light of its prior administrative interpretation and application. Assuming the fact that the Bank Commissioner has in the past granted similar applications, such actions are not persuasive in this case to induce us to vary the very unambiguous terms of our branch banking statutes."

The State Bank of Provo was denied the right to have its walk-in branch where it did not comply with the take over provision of the Utah Statute.

Is the situation here any different than that presented in Walker Bank v. Taylor supra. It is still true that "no branch (is) authorized to conduct a banking business except as in section 7-3-6 expressly provided." It is still true that "the business of every bank shall be conducted only at its banking house and every bank shall receive deposits and pay checks only at its banking house except as (in section 7-3-6) provided." And it is still true that there is no express permission for banks or branches to construct an additional and separate office or offices hav-

ing a different set of walls where deposits are received and checks paid in cities of the second class in Section 7-3-6, Utah Code Annotated, 1953. In view of the express language of the legislature, can it be claimed that the intent of the statute was to permit the construction of additional offices for the convenience of customers in making deposits and paying checks so long as the actual records of the deposits and payments are kept at the main banking house and so long as the management of the additional office is one and the same as that in the main banking house.

Similar arguments were used in Continental Bank v. Taylor, 14 Utah 2d 370, 384 P2d 796. This was an action for declaratory judgment that the practice of the bank to permit insurance agents to have bank's forms for chattel mortgages and promissory notes and when the agent would contact a customer purchasing an automobile for insurance "either at their offices or homes or at the office or place of business of the customer" they would also arrange for the customer to borrow the money from the bank. The agent would call the bank for approval of the loan and if approved, the customer would sign a check drawn on the bank to purchase the automobile and the agent would forward the signed mortgage and note to the bank. The court cited Section 7-3-6 and said:

> "We consider the language of Section 7-3-6, Utah Code Annotated, 1953, as amended, referring to and defining the term 'branch' as meaning and including an office or place of business 'where deposits are received or checks paid or money lent' by the bank."

The court further stated that wherever the agent is "even upon the street" when he transacts the bank's bus-

iness this comes within the branch definition in the statute and such business is unlawful.

> "We think the requirements of the statutes are wise and proper that those places at which a bank receives deposits or cashes checks or lends money should be only those places which have been established pursuant to the statutory requirements.
>
> "If such office or place of business is not so established or conducted, then it is not proper and it is not lawful."

The court rejected the argument that the entire loan was processed in the banking house except for the signing of the papers and therefore the business was conducted in the banking house. Here the defendant Walker Bank contends that the entire transaction of receiving the deposit or paying the check takes place within the four walls of the branch banking house except for the actual transfer of the money between the bank's agent and the customer. Except for the fact that the additional offices established by Walker Bank at 35 East 1st North are permanent structures, there seems to be no difference between the contention made by the bank in the Continental Bank case and that contended by Walker Bank here.

That the legislature intended to include drive-in windows, teller windows and separate receiving stations in its definition of a branch bank seems clear if we consider the language at the end of Section 7-3-6:

> "The bank commissioner may by order permitting the establishment of such branch or office designate and limit the character of work and service which may therein be performed."

Since the legislature specifically included offices which are limited in the services they can offer (e.g. merely receiving deposits or paying checks), there is no room for the argument that the legislature in prescribing the methods for establishing branches was referring only to full service branches and did not mean to include teller windows which are under the same management and controls as the main branch banking house.

Walker Bank's teller windows are 134 feet from the entrance to the main branch banking house at 102 North Main. The additional offices at 35 East 1st North are also separated from the main banking house by a right of way and consequently there can never be a single building housing both offices until the owners of the dominant estate relinquish their right of way. Consequently there is not now and never can be a single banking house receiving deposits and paying checks at both the 102 North Main and the 35 East 1st North locations.

If we say that it is proper to establish a drive-in window 134 feet from the main entrance of the banking house and separated therefrom by a right of way, then is it proper to establish a drive-in office 134 feet from the main entrance and separated from the main building by a separate business establishment and a right of way? And if this is still within the intent of the legislature, can there be as many as ten business establishment between the main office and the drive-in window?

In Jackson v. First National Bank of Valdosta, 246 F. Supp. 134 (U. S. D. C. Georgia) this situation was presented. Here a National Bank sought to establish a

drive-in facility. Since the definition of the Federal Statute [see 12 U. S. C. Section 36(f)] is identical with the Utah statute the difference in the types of banks is of no consequence. In this case there were ten buildings between the alley and the drive-in facility instead of one as in the fact situation here and consequently the drive-in facility was 291 feet away instead of 134 feet as in our case.

The court held that this was an additional office or branch prohibited to State banks by state law and since Federal banks are subject to the same restriction as state banks the facility was not authorized. The court quoted the definition of a branch in 12 U. S. C. Sec. 36(f) and said:

> "It seems to this court that either of the terms 'additional office' or 'branch place of business' is sufficiently broad to cover the facility in question. After stating the above terms the subsection ends with this language: 'at which deposits are received or checks paid or money lent.' The patent meaning of this part of the statute is that an 'additional office' or 'branch place of business' will be considered a 'branch' for purposes of Section 36 if any one of the three specified conditions are met, i. e. if deposits are received or checks are paid or money is lent. While only one of these conditions is necessary for coverage, two of them are conclusively shown to be present in the instant case. It is stipulated at page two of the pretrial order that customarily checks are cashed and deposits are received at the 'drive-in facility.' With the definition in Section 36(f) as broad as it obviously is and with the factual requisites for its application so conclusively established, this court would be acting legislatively if it were to find non-coverage."

The court said that it was urged that this is a "mere expansion of an existing facility because there is a unity of operation with the main facility" and rejected this argument.

The court said that it considered the following factors in reaching its decision:

(1) Distance. Here the distance was 291 feet. In our case there is 134 feet from the main entrance at 102 North Main to the drive-in offices. In the case of Michigan National Bank v. James J. Saxon, Civil No. 821-62, U. S. District Court for the District of Columbia (1962), not reported (perhaps because no competitor bank was involved) the court said even at a distance of 500 feet it is not an additional office if it is merely additional office space to an existing facility and not a separate and independent office, operating in the same way as branch banks generally operate. If a distance of 500 feet is not objectionable then perhaps 1000 feet is all right or even one mile. Apparently over 400 feet is all right in Utah if we permit administrative officers to write legislation instead of following the language of the statute. (Tr. 16).

(2) Intervening structures. The court said ten buildings are too many. The First District Court said available office space for one office is apparently all right. But the question is posed, where is the legislation that prohibits an office ten buildings away but authorizes an office for receiving deposits and paying checks which is only one building away.

(3) Lack of physical connection. The Federal Court said that the lack of a pneumatic tube made no difference

in its decision as apparently it did not consider a tube a physical connection. The court cited differing opinions of attorneys general in Nebraska and South Dakota to show the results that can be reached where the legislature is permitted to remain silent on the subject by overly ambitious administrative officers who try to solve every legislative problem that arises without referring the matter back to the law making body who is supposed to be the only consitutional authority having legislative power.

(4) The economic effect on the balance of competition. As is hereafter discussed an interpretation of the statute which gives one bank the right to provide drive-in service, but leaves other bank in doubt as to what possible alternatives are permissible constitutes an indirect method of enacting special legislation forbidden by the Utah Constitution. Here the decision of the District Court permits Walker Bank's branch to have a drive-in window, but the First National Bank's property being surrounded by Woolworth's building, it cannot build a drive-in office under identical circumstances. If it purchases property elsewhere for the construction of a drive-in window, another or the same court may decide that the additional distance is not according to the intent of the legislature and will hold that the First National Bank's drive-in window is a branch even though operated under the same conditions as the drive-in window allowed Walker Bank by the decision of the lower court.

If it is proper to establish a drive-in teller's window separated from the main banking house by a right of way, can such a teller's window be established across the street, which is only a public right of way? If this is proper then

how far down the street must the drive-in window be established before it comes within the definition of the legislature as being a branch. If Walker Bank can establish an additional office over 134 feet from the entrance of its main banking house and separated from the office by a right of way, then may Walker Bank purchase the Woolworth Building surrounding the First National Bank and establish another office next door to the First National Bank? Such an office would only be separated from the main banking house by a right of way and it would be within 134 feet of the main entrance to the Walker Bank branch banking house.

A careful consideration of the above possibilities seems to clearly indicate that the problem is one for the legislature to define and not for the courts. If the Utah legislature wishes to permit drive-in windows as additions to established bank or branches it should specify the conditions under which such drive-in windows can be established as has been done by twenty other state legislatures faced with a similar problem as we have in Utah (see below). The Utah Supreme Court having stated that "our statute is restrictive and what it does not expressly permit, it prohibits" should return the problem to the legislature for its consideration by holding that there is no express authority for establishing a drive-in window to receive deposits and pay checks which is separated from the main banking house by a right of way.

b. History and Definition Require a Separate Teller's window to be included in the Term "Branch."

It is submitted that Walker Bank is trying to accomplish the same purpose as the Comptroller of the Cur-

rency of the United States tried in 1922. In 1922 there was no Federal statute permitting branching by National banks. In that year the Comptroller ruled that National banks could open additional teller windows to carry on the business of banking. The First National Bank of St. Louis opened a teller window near its main office and the Attorney General of Missouri brought a quo warranto proceeding to determine if the structure violated Missouri law prohibiting branch banking. The bank contended that its charter authorized the doing of business in St. Louis and did not limit it to a particular location. The Supreme Court of Missouri rejected this argument and said the use of the singular terms office and banking house (cf. First paragraph of 7-3-6, UC.A. 1953) only gave the directors the right to choose the location and after having chosen that location they had no authority to subdivide and multiply the places of business. The court said:

> "This location having been established, it is within the contemplation of the statute that the power of the bank is to be there exercised. Otherwise the words 'an office or banking house' ceased to be specific, and instead of being singular in number may be construed as plural, and this permit the establishment of bank in as many places within the county, city or town as the judgment of the directors may prompt."

The court denied the National bank the right to have windows at separate locations. See State ex rel Barret v. First National Bank, 297 Mo. 397, 249 S.W. 619, 30 A.L.R. 918. The decision was affirmed by the United States Supreme Court (1924) 263 U.S. 640, 68 L.ed. 486, 44 S. Ct. 213.

The Comptroller and the National banks interpreted the decision as preventing them from establishing any additional facilities within the community where the national bank was located and Congress was asked to give national banks some relief. While the bill was pending in Congress the Supreme Court of Kentucky seemed to disagree with the Missouri case. In Marvin v. Kentucky Title Trust Co. 218 Ky 135, 291 S.W. 17, 50 A.L.R. 1337, the court held that even though it had previously held that legislative silence on the subject must be construed as denying the privilege or the right to have branch banks, an additional office in the same city where the main bank was located for the purpose of receiving deposits and paying checks was not a branch in absence of a statutory definition of a branch. The Court said:

> "If a bank occupies an entire city block, can it be doubted it can establish an office for the receipt of deposits and payment of checks at each corner of its building and keep separate books at each place? Clearly the installation of such offices in the building is incidental to that business, and such an arrangement would have no injurious effect upon the financial management and control of the bank's business, as the officials charged with those duties do not devote their time to the details of the receipt of deposit or payment of checks. If such additional offices can be established at different points in the main building under the bank's control, no good reason appears why they may not be established elsewhere in the city of its location for the same purpose. The convenience to the general public of such an arrangement is easily perceived. The time consumed by a great number of depositors in making daily trips to and from banks of deposit during business hours

> calls for some measure of economy and renders the arrangement suggested very desirable, and as it is clearly incidental to the bank's business and neither violates the statute nor publice policy and the judgment of the court limits its application to the matter of receiving deposits and paying checks, no good reason can be perceived for denying the application."

The Court also said that a bank could have as many agents as it required to forward to the bank at its place of business the money of persons who desire to deposit with it. This ruling was later adopted by a Texas Court (Great Plains Life Ins. Co. v. First National Bank, 316 S.W. 2d 98) and where there was a statutory definition of a branch the court found the reasoning of the Kentucky court persuasive and permitted three tellers' windows across the street even though branches were forbidden and even though a bank could only cash checks and receive deposits at its own banking house.

In holding that a Utah bank could not permit its agents to make loans outside of the main banking house under our branch banking statute, it appears that the Utah Supreme Court has definitely rejected the reasoning of the Kentucky and Texas courts. (Continental Bank v. Taylor, supra.)

With the decision of the Kentucky court in mind and with the ruling of the United States Supreme Court in the Missouri case before it, Congress broadened the definition of "branch" bank to include "additional office at which deposits are received, checks paid or money lent" in writing 12 U.S.C. Sec. 36(f). The indentical definition is

contained in our Utah statute as appears in the Federal law. The American Bankers Association opinion is that under the Federal statute (which also applies to Federal Reserve banks who are state banks under 12 U. S. C. Sec. 321) a teller's window constitutes a branch. (See I Paton's Digest page 562.)

Apart from the cases dealing with banks it appears that an office "is a building, room or department in which the clerical work of an establishment is done" (Houston v. Kirchwing, 117 Co. 92, 184 P 2d 487, 491) which definition was taken from Webster's New International Dictionary, second edition. While tellers receiving deposits and paying checks may object to being called clerks, their work is clerical as distinguished from the management of the bank. Therefore, the fact that the defendant Walker Bank has two structures at 35 East 1st North in Logan, each surrounded by four walls which are separate from the four walls surrounding the main banking house, clearly indicates under the above definition that the defendant has an additional office at which deposits are received or checks paid, which office is a branch under the statutory definition.

If we inquire were deposits received or checks paid at 35 East 1st North when Walker Bank acquired the Cache Valley Banking House as a branch in 1956, we must answer in the negative. It seems reasonable then to hold that this is an additional office for receiving deposits and paying checks. If so, it must be conceded that it was not acquired by taking over another unit bank as expressly provided by the Utah statute.

c. Other States have Enacted Legislation Defining the Circumstances under which Drive-In Windows are permitted.

At least ten states (Alaska, Arizona, California, Delaware, Idaho, Maryland, Nevada, Rhode Island, South Carolina, and Vermont) permit unlimited branch banking and therefore there is no problem as to whether a drive-in window consitutes a branch as the respective bank commissioners would be obliged to authorize its operation even if it were a branch.

In the lower court Walker Bank relied to a great extent on the fact that in the past many attorneys general have ruled that drive-in windows under certain circumstances are not branches. This of course is to be expected where the definition of a branch bank varies from state to state. However, the question this appeal presents is whether an administrative official should legislate the circumstances under which a teller's window is a branch or is not a branch or whether the Court should require the legislature to take action redefining the term. It is interesting to note that in many states the legislatures were not willing to permit the attorneys general to usurp their functions and they acted even after the attorney general had broadened the restrictions on teller's windows. In other states the action by the attorney general has been accepted by the state legislatures until such time as an unsuspecting bank's action in establishing a facility is challenged by a competitor in the Courts. It seems the Courts would be doing the banking community a disservice if they now permit the administrative interpretation to broaden the statutory definition and then later

disapprove such an interpretation when an overly ambitious administrator extends the meaning of the statute beyond what the Court considers as reasonable. A review of some of the action and opinions is presented for the Court's consideration:

I. ALABAMA:

a. Legislation (1958 Code, Title 5, Section 125) prohibits establishment of branch banks, but many special laws have been enacted which permit branches in certain counties and municipalities.

b. Attorney General: On Nov. 16, 1959, said separate tellers' windows on same lot as main banking house, connected by continuous asphalt paving, hot and cold water lines, wire from ADT alarm system and telephone lines were not branches. (I CCH, Federal Banking Law Reports, par. 3169, p. 2205). On Apr. 12, 1954, drive in window separated by 20 foot alley and connected by overhead passage way and underground conveyor system was not a branch. (93rd Annual Report, Comptroller of Currency, 1955, TD No. 3200, p. 11.)

II. ARKANSAS:

a. Legislation: Sec. 814, 1937 Statutes, permitted additional offices in same county for receiving deposits and paying checks if no other bank located there. After the Attorney General amended this statute by his opinion referenced below, the legislature enacted Section 67-340 (1957 Code Anno.) providing for teller's windows if they are not more than 1000 feet from the main office, and if such window is more than 300 feet from the main office, in shall not be located closer than 1,000 feet from the main office of another bank.

b. Attorney General: On Mar. 7, 1955, ruled that it would be legal to place teller's window across the street, 80 feet from the banking house, connected by a pneumatic tube. (TD No. 3200, supra).

III. COLORADO:

a. Legislation: Rev. Stat. Sec. 14-13-1. No branches permitted and a facility or paying or receiving station is a branch.

b. Attorney General: May 28, 1959, teller's windows on same lot, within 50 feet of building, connected by pneumatic tubes is not a branch. (I CCH, Fed. Banking Law Reports, supra.)

IV. FLORIDA:

a. Legislation: 1927 Stat. Sec. 6070 prohibits branches. Cum. Supp. Section 659.06 provides that banks may operate a drive in facility if part of or adjacent to main banking room; there must be a physical connection of the main banking room and the facility; there must be a private connecting doorway or enclosed passageway connecting main banking room and drive-in so tellers can pass between the two without coming in contact with the public. The bank may have walk up facility not physically connected if located on same or contiguous property as main banking room.

V. GEORGIA:

a. Legislation: 1933 Code Sec. 12-203 no new branches. Cum. Supp, Section 13-201.1 et seq. One facility within limits of city where main bank is located may be established (but not two as was attempted in Valdosta case, supra). Facility must be within two miles of main bank.

VI. INDIANA:

a. Legislation. After the Attorney general modified the branch banking statute with the opinion set forth below, the legislature enacted Chap. 125, Acts of 1959, amending Burns Anno. Sta. 18-1104 which provides that any bank which owns or leases a parking lot not more than 500 feet from the main office of the bank and no closer to some other bank than it is to the bank establishing such facility, may maintain on the parking lot an office for receiving deposits and paying checks.

b. Attorney General: Feb. 16, 1953 ruled the operation of a banking facility office located across an alley from main banking premises, and connected by a tunnel was not a branch. (TD 3200 supra).

VII. IOWA

a. Legislation. After the attorney general modified the statute which was silent on walk up or drive in windows with the opinion set forth below, the legislature provided that banks may establish one parking lot office either adjacent to the bank or remote but if remote it must also be remote from any other bank and also remote from the parking lot office of any other bank. (Anno. code Sec. 528.51).

b. Attorney General. On Mar. 12, 1954 ruled that a station one half block plus two streets from the main bank and connected by a pneumatic tube was not a branch. (TD 3200, supra.)

VIII. ILLINOIS:

a. Legislation: Anno. Stat. Chap. 16½ Sec. 106 provides that 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.

b. Attorney General. On March 8, 1962 said that a facility which is separated by more than an alley and is not adjacent to main banking house is prohibited even though connected by a pneumatic tube. (I CCH, Fed. Banking Reports, supra.)

IV. KANSAS:

a. Legislation. After the attorney general modified the statute which was silent as to drive-in teller windows in the opinion set forth below, the legislature provided in Cum. Supp. Sec. 9-1111 that banks may establish an auxiliary teller office within 2600 feet of main bank but not closer than 50 feet to another bank to receive deposits and pay checks.

b. Attorney General. On Mar. 31, 1954, ruled that a separate teller window connected with the banking office by a tunnel, corridor or passageway not accessible to general public was not a branch. (TD 3200 supra.)

X. MASSACHUSETTS:

a. Legislation: A branch office is permitted by Chap. 168, Sec. 5, Acts of 1957, Chap. 1, if no main office of another bank is located in the town.

XI. MICHIGAN

a. Legislation. Section 23.762 (1) (2) as amended by Public Acts of 1959, No. 248 a branch facility is permitted if no bank or branch within five miles thereof has been established.

XII. MINNESOTA

a. Legislation. Anno. Sta. 1946 Section 48.34. No bank may receive deposits or pay checks within this state except at its own banking house.

b. Attorney General. On April 12, 1960 said that a drive in 127.5 feet from main banking house and connected by pneumatic tube was not a branch. (I CCH, Fed. Banking Reports, supra.)

XIII. MISSISSIPPI

a. Legislation: 1956 Code Sec. 5226-5236.5 and laws of 1962, S.B. 1674 permit a drive-in teller's window within the same municipality in which the branch or bank is located.

XIV. MISSOURI

a. Legislation. After the attorney general modified the language of the statute prohibiting branch banks as set forth below the legislature enacted Section 362.107 which permits one drive-in and walk-up facility not more than 1000 yards from the bank nor closed than 400 feet to a competing bank unless it is closer to the parent bank than the competing bank.

b. Attorney General. On Mar. 30, 1949 he ruled that an office connected by a pneumatic tube in a parking lot directly across from the bank was not a prohibited branch. (TD 3200 supra.)

XV. MONTANA

a. Legislation: S. R. 67 of the laws of 1965 authorizes bank to enter into agreements reducing required distances from main banking house to facility from 200 to 150 feet between competiting facilities and from 300 feet to 200 feet between facility and main banking house.

XVI. NEBRASKA

a. Legislation. After the attorney general modified the legislation which prohibited banks from receiv-

ing deposits or paying checks except at its own banking house as indicated below the legislature provided in Rev. Stat. 8-1,105 for a teller window within 2600 feet but not closer than 300 feet to another bank, nor closer than 50 feet to another teller window of another bank.

b. Attorney General. On June 3, 1954 he said a teller window across the alley and connected by a pneumatic tube was not a prohibited branch. (TD 3200, supra.)

XVII. NEW JERSEY

a. Legislation. Anno. Stat. 17:9A-19 through 23.8 and 17:9A-139 permit auxiliary office not more than 2000 feet nor closer than 1000 feet from a competing bank unless such bank gives its written permission.

XVIII. NEW MEXICO

a. Legislation. Anno. Stat. 1953 Sec. 48-2-16 through 19 an additional office is permitted if connected by a subterranean or overhead passageway through which bank personnel may pass.

XIX. NEW YORK

. Legislation. Sections 190 through 195 as added by Laws of 1960 Chap. 1064 and amended by Laws of 1961 Chap. 203 permit one public accommodation office not more than 1000 feet from main bank or branch.

XX. NORTH CAROLINA

a. Legislation. Gen. Stat. 1960 Sec. 53-141 and Cum. Supp. 53-62 permit teller's window in same town or city as bank or branch is located.

XXI. NORTH DAKOTA

a. Legislation. Cnt. Code. Anno. 1959 Sec. 6-03-15 through 19 and Cum. Supp. 6-03-14 permits receiving and paying stations in any city where another bank is not located.

XXII. OKLAHOMA

a. Legislation. After the attorney general enacted his own branch banking statute by the below opinion in 1965 the legislature enacted Sec. 415.A which permits drive-in or walk-up teller's windows within 1000 feet of the main bank building.

b. Attorney General. Between 1953 and 1955 issued various opinions permitting teller's windows within 4000 feet if connected by closed circuit television. (TD 3200, supra.)

XXIII. SOUTH DAKOTA

a. Legislation. After the attorney general modified the law in the opinion cited below, the legislature enacted H. B. 646 of the Laws of 1965 which permits one detached drive-in under certain specific conditions.

b. Attorney General. On August 2, 1954 ruled that a small building connected by a tunnel would not be a branch but if connected by only a pneumatic tube it would be a prohibited branch. (TD 3200 supra.)

XXIV. TEXAS

a. Legislation. After the attorney general continued to modify the statute as indicated below the legislature passed H. B. Laws of 1963 amending Art. 342-903 providing an office may be maintained

within 500 feet if connected by a tunnel or passageway.

b. Attorney General. On Apr. 26, 1950 held that a window across the street connected by a tunnel was not a branch. (TD 3200 supra.)

XXV. WYOMING

a. No legislation on the subject.
b. Attorney General. On May 12, 1955 ruled that the banks may open offices even though no physical connection with the bank. (TD 3200, supra.)

XXVI. WISCONSIN

a. Legislation. Laws of 1959 S. B. 95 amending Section 221.14(4) provides that a bank may purchase or lease real estate to provide parking facilities and establish paying and receiving windows on such real estate if within 300 feet of bank's main office.

b. Attorney General. In a courageous opinion that held the above statute means what it says, on Aug. ust 29, 1962, he ruled that if primary purpose of real estate purchase was to provide parking lot a teller window could be erected if within 300 feet of main banking office. (I CCH, Fed. Banking Reports, supra.)

It is respectfully submitted that since the Utah Legislature has remained silent on the question of additional facilities for paying checks and receiving deposits, the court should not permit the Attorney General or any other administrative body to define the number of feet, the distance, the purposes, the physical connection, or any other factor that must be considered before a bank or branch may establish such additional office for the pay-

ing of checks or receiving of deposits. If the Court follows its previous opinions and continues to state that "our statute is restrictive, and what it does not expressly authorize it prohibits," then all banks are on equal grounds and the burden is on the banking community to obtain action from the legislature if business requirements necessitate some form of drive-in window service. As is indicated above, in nearly every state having a problem as to when a drive-in office is a branch, the legislature has recognized that it must solve that problem. The Supreme Court can assist in bringing the problem before the Utah legislature by following its previous cases and reversing the lower court.

Under the restrictions mentioned in the attorney general opinions cited, Walker Bank's tellers window may have been a branch in nine of the states mentioned at the time of the opinion and would not have been a branch in only five of the states.

State	*Walker's Facility a Branch?*	*Reason Walker's Office may be a Branch*
ALABAMA	Yes	Attorney General required overhead passage way when separated by an alley.
ARKANSAS	No	Walker's office would probably not be a branch.
COLORADO	Yes	Walker's office is not on same lot but is separated by an alley.
INDIANA	Yes	Walker's office is not connected by a tunnel.
IOWA	No	Walker's office would probably not be a branch.

ILLINOIS	Yes	Walker's office is separated by more than an alley, there is also a separate business establishment between main office and teller window.
KANSAS	Yes	Walker's office is not separated by a tunnel.
MINNESOTA	Yes	Walker's office also separated by an alley from main office.
MISSOURI	No	Walker's office would probably not be a branch.
NEBRASKA	Yes	Walker's office also separated by another business establishment from its branch.
OKLAHOMA	No	Walker's office would probably not be a branch.
SOUTH DAKOTA	Yes	Walker's office not connected by a tunnel.
TEXAS	Yes	Walker's office not connected by a tunnel.
WYOMING	No	Walker's office would probably not be a branch.

d. Administrative Interpretations of Statutes may cause Unequal Competition.

In order to emphasize the importance of permitting the legislature to clearly define the limitations under which a bank may operate a drive-in window may we assume a situation that has grown out of experience of a number of banks.

Suppose in 1962 the Provo State Bank recognized that its customers would be better served if it provided a drive-in window for receiving deposits and paying checks. In checking with the State Bank commissioner he may have told of an early opinion of the attorney general which permitted drive in windows within 146 feet of the main banking office. In checking with the bank's attorneys they would be required to review much of the argument that has heretofore been presented in subdivision "a" "b" and "c" above. The uncertainty may have sent the bank's officers back to the State Bank Commissioner.

This time the State Bank Commissioner might say that pehaps the better method would be to apply for a branch and then the formal approval of the Commissioner could be obtained and thus remove the uncertainty where an expansion is commenced without approval. The attorneys for the Bank review the matter and conclude that the Utah State Statute would authorize a branch and the bank proceeds accordingly. Walker Bank v. Taylor, supra. is the result.

Later Walker Bank proceeds to build a drive-in window a block away from its main banking office in Provo as First Security Bank has done and under the decision of the District Court in this case is upheld. In neither case was there express permission in the statute for the action taken. In the first case the Utah Supreme Court said that Provo State Bank must suffer the consequences because what "our statute does not expressly authorize it prohibits." But it is respectfully submitted that a competive advantage may be given other banks who also as-

sumed the risk that the plain wording of the statue may mean something more than it says, if the Court now says that its statement in Walker Bank v. Taylor, supra, was not correct and affirms the District Court. Unless the Court at this time follows its previous opinions and reverses the lower Court, the legislature may not see any necessity for taking action. And in the future some other small unit bank, unable to pay the high price for purchasing an adjoining lot separated only by another office and a right of way, will proceed in an attempt to remain alive in the highly competitive banking field and purchase a lot at a greater distance, only to have the Court say that it exceeded the distance which the Court felt was reasonable, and the drive-in facility even though connected by a tube and managed by the same officers was in fact a branch under our statutory definition.

It is respectfully suggested that Utah will not have a definite statutory requirement as to the conditions under which a bank may operate a teller window, unless the Supreme Court reverses the lower court and puts the burden of such definition on the legislature as they may be assisted by the banking community.

Respectfully submitted,

Ted S. Perry
Attorney for Plaintiff-Appellant
106 Church Ave.
Logan, Utah