1966

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

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-Respondent

No. 10621

APPELLANT'S REPLY BRIEF

ARGUMENT

POINT I

RESPONDENT'S BRIEF SUPPORTS APPELLANT'S POSITION THAT IT IS THE RESPONSIBILITY OF LEGISLATURE TO CHANGE THE LANGUAGE OF THE BRANCH BANKING STATUTE.

In its argument in Walker Bank v. Taylor, 15 U. 2d 234, 390 P. 2d 592 (which argument was adopted by the Court), Walker Bank contended that the Utah Branch Banking Statute was plain and unambiguous and administrative interpretations should not induce the court to

vary "the very unambiguous terms of our branch banking statutes." This conclusion was bolstered by the fact that the state legislature specifically provided in 1953 that:

> "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 Annotated, 1953).

Walker Bank now contends that the Court should vary the plain words of the Statute because a Federal District Court (Michigan National Bank v. Saxon, Civil No. 821-62, D. D. C. July 25, 1962, not reported) said that a drive-in facility 500 feet from the main office was not an additional branch if it is not operated as "a separate and independent office operating in the same way as branch banks generally operate" even though such wording is not contained in the branch bank definition.

Two other Federal District Courts disagreed with the conclusion reached in the Michigan National Bank case. In State Chartered Banks in Washington v. Peoples National Bank, Civil No. 6338, W. D. Wash., February 28, 1966 a proposed facility 260 feet from the principal office having a different address was held to be a branch even though presumably not operated as a separate and independent office. And a drive-in facility 290.52 feet from the main bank building and separated by businesses and by an alley was held to be a branch in Jackson v. First National Bank, 246 F. Supp. 134 (M. D. Ga. 1965).

If courts interpreting the same language cannot agree as to the circumstances that are necessary to vary the

plain words of the legislature, can it be said that the legislature must have intended that an additional office, housing a separate teller, who receives deposits and pays checks, who is separated from the main branch banking office by an alley and a separate office is not an additional office for receiving deposits and paying checks and therefore a branch. The fact that Respondent is able to find but one Federal Court that has taken the liberty of extending the plain language of the legislature seems to imply that the definition of "additional office" or "branch" is plain and that the legislature intended that the State Bank Commissioner should control all expansion of existing facilities which involve establishing additional offices where deposits are received or checks paid. Since the Utah definition and the Federal definition of branch banks are identical, we submit that the disagreement among Federal Courts as to the interpretation thereof indicates any extension or modification of the language is a problem for the legislature.

Walker Bank also contends that because the State Bank Commissioner has ignored the opinion of the Attorney General (November 8, 1957) and has not contested expansion by state banks, that this Court should acquiesce in his failure to take action. This position was rejected in Walker Bank v. Taylor, supra.

Walker Bank concedes that the Attorney General of Utah in 1957 stated that a separate facility, 141 feet from the main banking house was a branch under the plain language of our branch banking statutes. But Walker Bank says we should ignore this opinion because a new State Bank Commissioner took no action when Continental

Bank and Beehive State Bank established drive-in facilities separate from their existing bank. Of course, action by the State Bank Commissioner against these two banks would have accomplished little since both banks had an unlimited right to branch in Salt Lake City under the provisions of our statute and such offices could have been authorized under the express provisions of Section 7-3-6.

Walker Bank also contends that because the Comptroller of the Currency has taken no action against First Security Bank in its establishment of drive-in facilities, this Court should enlarge the meaning of the Utah statute on branch banking. The Comptroller's position that he is not bound by state procedural restrictions on branch banking is well known (see Walker Bank v. Saxon, 234 F. Supp. 74, 352 F. 2d 90, cert. granted 34 U. S. Law Week 3377 No. 875; and First National Bank of Smithfield v. Saxon, 352 F. 2d 267). Obviously the Comptroller is not going to take action against First Security Bank if it means he may have to take a position contrary to the position for which he is presently contending.

POINT II

THE OPINIONS OF THE ATTORNEY GENERAL CITED BY RESPONDENT SUPPORT APPELLANT'S POSITION.

Walker Bank contends that the Attorney General's opinion of March 25, 1966 modifies the opinion of November 8, 1957 and should be followed by this Court. But while some Attorneys General in other states have found rights not granted by legislatures and have caused legis-

latures to more specifically define conditions for automobile banking, the Utah Attorney General has stayed within the statutory definition of a branch as interpreted by the Utah Supreme Court.

In 1957 the Attorney General said that a separate building separated from the main banking house by 141 feet and four offices in which a teller was housed for receiving deposits is a branch. In 1966 the Attorney General said a building separated only by an alley, *and not housing a teller,* but into which a customer may place money to be transported to the teller located *inside* the main banking house through a pneumatic tube where the teller is able to watch the entire transaction by television, is not a branch.

The significant difference between the two opinions is in 1957 the checks were paid and deposits were received *outside* the main banking house. In 1966 the deposit was received *inside* the main banking house. The distinction between the bank's agent being outside the main banking house and a transaction taking place within the main banking house was the basis on which the Court found that the outside agent was carrying on a banking business in Continental Bank & Trust Co. v. Taylor, 14 Utah 2d 370, 384 P. 2d 796, and was therefore a branch. If the Attorney General had given a different opinion in 1966 there may have arisen some question as to whether a bank could receive mail deposits since the customer loses possession of the money outside the main banking house. But in mail deposits and in the pneumatic tube arrangement considered by the Attorney General the deposit is received by the bank's teller inside its banking

house before the depositor receives credit therefor which is all that the branch banking statute requires.

But in Walker Bank's additional office at 35 East 1st North both the customer and the teller are outside the main branch banking house located at 102 North Main when the deposit is made. It is true that the deposit is later transferred to the main banking house, but the loan papers were also later transferred to the main banking house in the Continental Bank case, supra. But the Court said:

> "We consider the transaction completed and the 'money lent' at the time . . the executed note and mortgage are delivered to the representative of the Bank . . ."

Certainly it cannot be argued that the check is not paid when the customer delivers the check to the teller at 35 East 1st North and she delivers cash to him. It seems obvious that when the customer delivers cash to the teller at 35 East 1st North and she receipts for the cash in the depositor's pass book that a deposit is made. Therefore since admittedly Walker Bank receives deposits and pays checks at 35 East 1st North (Tr. 8) it is as much a branch as in the Continental Bank case supra. And since it was not established pursuant to authority of the State Bank Commissioner (Resp. Br. p. 4), it is an unauthorized branch bank under the laws of the State of Utah.

In seeking to make the situation as much like that in the 1966 Attorney General's opinion as possible Walker Bank emphasizes its claim that only an alley separates the additional office from the main bank building (Resp.

Br. pp. 3 and 7). Walker Bank seems to be conceding that the Utah Branch Banking Statute does not authorize a separate facility if separated both by an alley and one additional office operated by others. If this is so, Judgment should be entered for the Plaintiff. Appellant's attorney walks past the Utah Mortgage & Loan Real Estate office located at 15 East 1st North (between Walker Bank's branch at 102 North Main and its additional office at 35 East 1st North) every day. On August 15, 1966 Utah Mortgage & Loan were advertizing on the same sign that they have been using for years in the window of this office a five bedroom house in North Logan for $22,500. Inside the office was an agent and secretary who were receiving Utah Mortgage & Loan customers. Respondent claims on page 7 of its brief that it must be assumed it will comply with the terms of the order of the lower court and it claims the lower court ordered it to occupy the Utah Mortgage & Loan office when it opened its drive-in facility for business. But the drive-in facility and Utah Mortgage & Loan were both open for business on August 15, 1966. All the lower Court's decree provides is that the plaintiff's complaint is dismissed. There is no bar in the court's decree against the continued leasing of this office to Utah Mortgage & Loan or any other person.

However, regardless of whether Respondent knows if Utah Mortgage & Loan still occupies the office at 15 East 1st North, it is submitted that a separate office, housing a teller who receives deposits and pay checks, separated from the branch banking office (by a separate business establishment at the time the complaint was filed, at the time the court's decree was made, at the time

the drive-in facility opened for business, and at the time this brief is being written) by a right of way or alley for the use of others, and a distance of 134 feet from the branch entrance at 102 North Main to the separate office at 35 East 1st North, is a branch under the definition in the Utah statute. It is appellant's position that under previous decisions of this Court stating that our Branch Banking statute is "plain and unambiguous" and "what it does not expressly permit, it prohibits" (Walker Bank v. Taylor, supra., and Continental Bank & Trust Co. v. Taylor, supra.), opinions of the Utah Attorney General which thus far have held that if the teller receives the deposits at a place other than inside the main banking office it is a branch, the better reasoned Federal cases interpreting an identically worded Federal Statute (Jackson v. First National Bank, supra., and State v. Peoples National Bank, supra.) which actually involved adverse parties and not two parties desiring the same result as in the case of Michigan National Bank v. Saxon, supra., and for the other reasons stated in its briefs, such an additional office is a branch bank under the definition contained in Section 7-3-6, Utah Code Annotated, 1953.

Respectfully submitted,

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