



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Leonard, Speaker,
House of Representatives
Austin, Texas

Dear Mr. Leonard:

Opinion No. 0-4104

Re: Whether or not a state bank
in the hands of the Banking
Commissioner for liquidation
may be reopened for business,
and whether or not a state
banking institution may change
its place of business.

You request an opinion from this department in
answer to the following questions, to-wit:

- "1. Can a State Bank which is in the hands of the Commissioner for liquidation either voluntarily or otherwise be reopened for business and under what procedure?
- "2. Can a State Bank placed in voluntary liquidation by the Board of Directors be reopened and resume business, and if so by what procedure?
- "3. Can a State Bank change its domicile from one town to another in this State and by what procedure?"

Article 451 of the Revised Civil Statutes relates to the liquidation of a bank which has come into the possession of the Banking Commissioner, either by the voluntary act of the Board, under Article 450, or by the initiation of the Commissioner in taking over the bank, under Article 369 of the statute.

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Article 452 declares:

"Such bank may, with the consent of the State Banking Board, resume business upon such condition as may be approved by the Board. Such consent shall be evidenced by written statement from the Commissioner."

The procedure in such a case would be for the bank, acting through its directors, to make known to the Banking Board its desire to resume business, and to accompany such request by such statement and information as the Board may think pertinent, and upon satisfying the Board, the Board should formally express its consent to such reopening, which consent should then be evidenced by the Banking Commissioner's written statement to the Board, upon which authority the bank would be authorized to reopen.

This answers your questions 1 and 2, assuming that your question 2 relates to a bank which has been placed by its board in the hands of the Commissioner for liquidation upon the grounds of insolvency, or other statutory ground.

If your question No. 2, however, contemplates a voluntary liquidation by the Board itself of a solvent bank, which has in nowise come into the hands of the Commissioner for liquidation, our answer to that question would be that such solvent bank, even though in the process of self-liquidation, may nevertheless resume its normal banking functions so long as it is solvent. In such a case it would be wise for the Board before resuming business to obtain from the Banking Commissioner his approval, that is to say, making sure that no grounds exist which would justify the Commissioner in taking summary charge of the bank, under Article 369 of the statutes.

Replying to your third question, we refer you to Article 381a of Vernon's Codification of the Revised Civil Statutes, which declares that any state bank, or bank and trust company, may amend its charter "for any other lawful purpose".

While the statute (Article 377), governing the organization of banking institutions, requires that the articles of association shall state, " * * * the name of the city or town and county in which the corporation is

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to be located", yet, under the statute of amendment above cited, the charter may be amended for the purpose of changing the domicile of the bank, for this is a lawful purpose -- certainly it is not unlawful.

Article 381a authorizing charter amendments contemplates, generally, that the amendment becomes effective when adopted by a vote of the stockholders holding two-thirds interest of the capital stock, and when approved by the Banking Commissioner and filed in the archives of his office. But, in respect to an amendment which contemplates the change of the bank's domicile, there are other statutes which would require the approval of the Banking Board. We refer to Article 384 respecting the public necessity of the business of the community in which it is sought to establish a bank, and to Article 391, regulating the amount of capital stock upon the basis of population of the town or city in which the bank is to be located.

We think these statutes, pertaining as they do to the lawful, constitutional and statutory scheme of regulation of such corporations, should be read in connection with Article 381a, authorizing charter amendments, and that all of them should be respected and none violated in any such proposed amendment.

Furthermore, we would suggest, though we do not decide, that the amendment of a charter with respect to the place of domicile of the bank might be held to be such a fundamental change in the corporate existence as to require the approval of the stockholders.

Very truly yours

APPROVED
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Homer Leonard
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