



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

September 9, 1969

Honorable Robert E. Stewart
Deputy Commissioner
Department of Banking
John H. Reagan Building
Austin, Texas 78711

Opinion No. M-464

Re: Whether the Banking Commissioner has the power, authority and duty to require National Banks to comply with the provisions of Section 1a of Article 342-910a, V. C. S.

Dear Mr. Stewart:

In your recent letter you request this office to render an opinion on the following questions:

"(1) Does the Banking Commissioner have the authority, power and duty to require National Banks to cease and desist acceptance of deposits on Saturday under the circumstances set out?

"(2) If your answer is in anywise in the negative, please advise whether the Banking Commissioner has the authority, power and duty to permit the State Banks to accept Saturday deposits competitively with the manner of acceptance by the National Banks."

Two factual situations are presented in your letter. The first involves a national bank which has filed with your office a resolution by its Board of Directors that it will be closed for general banking purposes on Saturday but remain open to perform limited banking service on such day pursuant to Section 1a of Article 342-910a, Vernon's Civil Statutes. In the other situation, you refer to a national bank which has not elected to be closed on Saturday or any other weekday in accordance with Section 1a, supra. Both banks are accepting deposits on Saturday.

Article 342-910a reads in part, as follows:

"Sec. 1a. Any bank or trust company doing business in this State, may, at its option close for general banking purposes on Saturday or any other weekday provided such day is designated at least (15) days in advance by adoption of a resolution concurred in by a majority of the Board of Directors thereof . . . , and by notice posted in a conspicuous place in such bank or trust company for at least such time, and by filing a copy of such resolution certified by the cashier of such bank or trust company in the office of the Commission of the Banking Department of Texas . . . Any such election to so close shall remain in effect until a subsequent resolution shall be adopted and notice thereof posted and a copy thereof filed in the manner above provided. If any bank or trust company elects to close for general banking purposes on Saturday or any other weekday as herein provided, it may, at its option, remain open on such day for the purpose of performing limited banking services . . . Limited banking services shall mean: transit operations, cashing and certifying checks drawn on the bank performing such limited services, receiving payments on obligations due to such bank or to any other party for which such bank is acting as collection agent, making change and providing access to safety deposit boxes. Such day upon which such bank or trust company may elect to be closed for general banking purposes shall with respect to such institution be treated as Sunday or the Christian Sabbath for all purposes and not a business day; provided that if such bank shall elect to perform limited banking services on such day, the same shall not be deemed a legal holiday for the performance of limited banking service. Any bank or trust company which elects to close for general banking purposes on Saturday or any other weekday but which elects to perform limited banking services shall not be subjected to any liability or loss of rights for performing limited banking services or refusing to perform any other banking services on such day.

"Sec. 1b. The provisions of Section 1a of this Act shall be completely permissive with each individual bank or trust company in this State, and no bank, trust company, clearing house association, or group of banks or trust companies, shall discriminate against or refuse its services to any bank or trust company or enter into any agreement to discriminate against or refuse its services, either directly or indirectly to any bank or trust company which may or may not elect to exercise any of the options contained in Section 1a of this Act. The provisions of the Antitrust Laws of this State shall be applicable to the provisions of this Act, and the Attorney General of Texas shall institute and prosecute any legal proceedings authorized by law to enforce the provisions of this Act, including forfeiture of right to do business in Texas for violation of such provisions."

It is the opinion of this office that Section 1a was enacted for the benefit of banks. Its primary purpose is to permit banks or trust companies to close on days other than legal holidays. Furthermore, it permits banks or trust companies to be open to perform limited banking services without subjecting themselves to certain liabilities or loss of rights that might otherwise be incurred on a regular business day or refusing to perform any other banking services on such day.

There is no language in Article 342-910a which makes it an offense for a bank to engage in general banking services on a day it has designated to be closed or open for the limited purpose of performing limited banking services. On the contrary, Section 1b states that Section 1a is completely permissive with each individual bank or trust company. The first sentence of Section 1a reads that a bank or trust company may, at its option, close for general banking purposes on Saturday or any other weekday. In addition, it states if any bank or trust company elects to close for general banking, it may, at its option, remain open on such day for the purpose of performing limited banking services.

In addition, there is no language in Article 342-910a or in any other provision of the Texas Banking Code granting the Banking Commissioner

the power or authority to order a bank to cease and desist from performing services other than those defined as limited banking services on a day it has designated to be closed or open for limited banking purposes.

It is the opinion of this office, therefore, that Section 1a is purely discretionary with each individual bank, and the Banking Commissioner has no authority, power or duties with respect to Section 1a. The answer to your first question, therefore, is that the Banking Commissioner has no authority, power or duty to require National Banks to cease and desist from accepting deposits on Saturday under the circumstances you set out.

Furthermore, you request this office to advise "whether the Banking Commissioner has the authority, power and duty to permit State Banks to accept deposits competitively with the manner of acceptance by National Banks." This question has been interpreted to ask whether the Banking Commissioner can permit a State bank to accept deposits on a day it has elected to be closed but remain open for limited banking services and continue to gain the benefit of Section 1a.

An administrative agency has only such powers as are expressly granted to it by statute together with those necessarily implied from the authority conferred or duties imposed. See Stauffer v. San Antonio, 162 Tex. 13, 344 S. W. 2d 158 (1961). Where the Legislature acts with respect to a particular matter, the administrative agency may not so act with respect to the matter as to nullify the Legislature's action even though the matter be within the agency's general regulatory field. State v. Jackson, 376 S. W. 2d 341 (Tex. Sup. 1964).

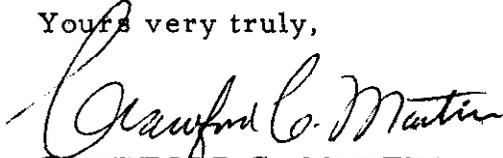
In Section 1a, the Legislature has expressly defined the type of banking services a bank or trust company can perform on a limited banking service day. Such definition does not include the acceptance of deposits. No authority is found in the Act granting the Banking Commissioner, expressly or impliedly, the authority to expand or limit this definition. It is the opinion of this office, therefore, that the Banking Commissioner does not have the authority, power or duty to permit State banks to accept deposits on a day it has designated to be closed for general banking purposes but open to perform limited banking services. The State bank, like the

National bank, may receive deposits on such day; however, it would be subjecting itself to liabilities or loss of rights that it might incur on a regular business day and would be waiving any benefits it might derive from Section 1a.

S U M M A R Y

The Banking Commissioner has no authority, power or duty to force a National bank to comply with the provisions of Section 1a of Article 342-910a, Vernon's Civil Statutes, nor does he have the power, authority or duty to permit State banks to accept deposits on a day it has designated to be closed for general banking purposes, but open for limited banking services without having said bank waive the benefits provided by said Section.

Yours very truly,



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