



**THE ATTORNEY GENERAL
OF TEXAS**

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**JOHN L. HILL
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August 10, 1977

Honorable Tom O'Connell
District Attorney
McKinney, Texas 75069

Opinion No. H-1039

Re: Whether a bank's
service as county deposi-
tory constitutes branch
banking when the bank is
located outside the county
seat.

Dear Mr. O'Connell:

You have requested our opinion regarding the constitu-
tionality of article 2553, V.T.C.S. That statute provides:

If any depository selected by the Commis-
sioners Court be not located at the seat of
such county, said Commissioners Court may
in its discretion require said depository
to file with the county treasurer of such
county a statement designating the place
at said county seat where, and the person
by whom, all deposits may be received from
the treasurer for such depository, and
where and by whom all checks will be paid,
said person to be approved by the Commis-
sioners Court; and such depository shall
cause every check to be paid upon presen-
tation or upon presentation at the expira-
tion of the period of notice in the case
of "time deposits" at the place so desig-
nated so long as the said depository has
sufficient funds to the credit of said
county applicable to its payment.

It has been suggested that the designation of such a place
where "deposits may be received" and "all checks will be paid"
may contravene the constitutional prohibition against branch
banking. Article 16, section 16 of the Texas Constitution
provides, in pertinent part:

The Legislature shall by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

. . .

Such body corporate shall not be authorized to engage in business at more than one place which shall be designated in its charter.

See also article 342-903, V.T.C.S., which implements the constitutional provision. By virtue of these provisions branch banking is illegal in Texas.

In Great Plains Life Insurance Co. v. First National Bank of Lubbock, 316 S.W.2d 98 (Tex. Civ. App. -- Amarillo 1958, writ ref'd n.r.e.), the court held that a bank may provide drive-in window service without running afoul of the constitutional prohibition:

[A] branch bank . . . is a separate entity and deposits made in a branch bank are payable there and only there unless the branch bank be closed on demand for the payment by the depositor be refused, then the demand for payment will be against the mother bank. Branch banks are not mere teller's windows.

Id. at 104. The court concluded that drive-in teller's windows are "a part of [the] bank and are not branch banks. . . ." Id. Likewise, in Letter Advisory No. 96 (1975), we held that drive-in facilities might be connected to the main bank by means of closed circuit television. In such an instance, the bank's business continues to be conducted in "'one place' within the meaning of section 16, so long as the drive-in facility is limited to teller services." Id. at 3.

In our opinion, article 2553 does not authorize a bank to engage in any activity beyond that approved in Great Plains, supra. The statute requires only that the bank's facility at the county seat receive deposits and pay checks -- services generally available at a teller's window.

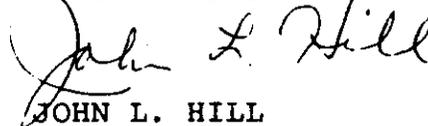
Furthermore, it may be questioned whether the activities described in article 2553 require a bank to "engage in business," within the meaning of the constitutional prohibition. The services authorized by the statute are limited to county fiscal matters and are not available to the general public.

Finally, it is well established that every statute carries a strong presumption of constitutionality and that all reasonable doubts are to be resolved in favor of its validity. Smith v. Davis, 426 S.W.2d 827, 831 (Tex. 1968); Ex parte Smith, 441 S.W.2d 544, 547 (Tex. Crim. App. 1969). A statute should not be declared unconstitutional unless it is plainly invalid. Maud v. Terrell, 200 S.W. 375, 376 (Tex. 1918). We believe that the courts would harmonize the provisions of article 2553 with the requirements of article 16, section 16. Accordingly, it is our opinion that a bank located outside a county seat may designate a facility for receipt and payment of county funds at the county seat, pursuant to article 2553, without thereby violating the constitutional prohibition against branch banking.

S U M M A R Y

A bank located outside a county seat may designate a facility for receipt and payment of county funds at the county seat, pursuant to article 2553, V.T.C.S., without thereby violating the constitutional prohibition against branch banking.

Very truly yours,



JOHN L. HILL

Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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