OFFICIAL OPINION NO. 39

August 20, 1956

Mr. R. R. Wickersham
State Examiner
State Board of Accounts
304 State House
Indianapolis 4, Indiana

Dear Mr. Wickersham:

This is in answer to your request for an Official Opinion as to the status of branch banks with respect to the Depository Act of 1937, as amended, your questions being as follows:

> "1. Where a bank or trust company located in one municipality has one or more branch offices located in other municipalities, are each of such branches considered to have a legal situs in the municipality wherein they are located, such as would require the designation of such branches as depositories?
>
> "2. If your answer to question No. 1 is in the negative, would your answer be the same if the branch office was the only depository located in the municipality?
>
> "3. If your answer to question No. 1 is in the affirmative, would the entire resources of the parent bank and branches be considered as the basis for allocating deposits, or only the resources of the branch located in the municipality?
>
> "4. What might be the basis for allocating the resources under question No. 3 should the financial structure of the bank or trust company be such that the resources of each branch cannot be determined from the bank or trust company's records?"

The Acts of 1937, Ch. 3, Sec. 3, as found in Burns' Indiana Statutes (1951 Repl.), Section 61-624 (a), requires that all public funds, as defined in that Act:

> "* * * shall be deposited daily in one or more *depositories* in the name of the state or municipal corporation by the officer having control thereof." (Our emphasis)

The Depository Act itself defines the term "depository," said definition being as contained in the Acts of 1937, Ch. 3, Sec. 1(g), as found in Burns' Indiana Statutes (1951 Repl.), Section 61-622(g), which reads as follows:

> "The term 'depository,' or the plural thereof, means *banks or trust companies* constituted as depositories of public funds under the terms of this act." (Our emphasis)

The same Act, Acts of 1937, Ch. 3, Sec. 1(f), as found in Burns' Indiana Statutes (1951 Repl.), Section 61-622(f), defines the term "bank or trust company" as follows:

> "The term 'bank or trust company,' or the plural thereof, means any national banking association formed under the laws of the United States with its principal office located in the state of Indiana and doing business herein, and any bank or trust company, any bank of discount and deposit, loan and trust and safe deposit company, or trust company organized and doing business under the provisions of any law of this state."

At this point it may be noted that the Depository Act makes no reference to branch banks although the existence of such was well-known to the Legislature.

The Acts of 1933, Ch. 40, Sec. 224, as amended, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Section 18-1707 and succeeding sections, provide the procedure for the opening and establishment of branch banks of state banks or trust companies. The foregoing cited sections of our banking law require that the application to open and establish a branch bank must be filed by an existing bank or trust company and the capital and surplus requirements refer to those of the applicant bank, instead of a minimum paid-in capital requirement of the branch as in the case of establishing a new corporate body. It is clear from these sections of our banking law that branch banks do not operate under and pursuant to a separate charter, but are governed by the Articles of Incorporation of the bank or trust company of which they are but a branch. Branch banks are governed by the Board of Directors of the bank or trust company through which they come into

being. In other words, branch banks have no separate, independent, corporate existence, but instead are merely an additional facility for the transaction of business by a bank or trust company in a location separate and apart from the principal office of such bank or trust company. Branch banks are permitted only upon a hearing which must establish that public convenience and necessity will be best served by the opening and establishment of such branch bank.

The status of a branch bank is stated in 1950 O. A. G., No. 47, page 186 at page 192, as follows:

> "A 'Branch Bank' although it is treated as a separate banking institution for some purposes is usually not regarded as a separate and distinct institution, but the relationship between the parent bank and its branches is that of the principal and agent. See 50 A. L. R. 1348 and 136 A. L. R. 428."

As heretofore noted in the definition of "bank or trust company," as contained in the Depository Act of 1937, that term also includes any national banking association formed under the laws of the United States with its principal office located in the State of Indiana and doing business therein. With respect to branch banks of national banking associations, the Federal Act, Ch. 753, Sec. 2(b), 66 Stat. 634, as found in 12 U. S. C. A. Banks and Banking, § 36(c) provides as follows:

> "(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute

> law to maintain branches within county or greater limits, if no bank is located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: Provided, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock."

Further, the Federal Act, Ch. 614, Sec. 305 (f), 49 Stat. 708, as found in 12 U. S. C. A. Banks and Banking, § 36(f) defines the term "branch," as used in connection with the national bank laws, as follows:

> "(f) The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."

Thus, the Federal Act, in harmony with the concept of branches of State banks heretofore stated, likewise treats branches of national banks merely as an agency or additional facility of a parent national banking association.

Therefore, in answer to your first question it is my opinion that the physical location of a branch bank is a place of busi-

ness of the parent bank or trust company. Branch banks, having no independent corporate existence, are without authority to be designated as a depository of public funds as the term depository is used in the Depository Act, *supra*. However, as hereinafter indicated, a branch bank may be used as the location at which public funds may be deposited if its parent bank has qualified and been designated as a depository.

Reference is now made to your second question and before answering the same, note should be taken of the provisions of the Acts of 1937, Ch. 3, Sec. 14(b), as found in Burns' Indiana Statutes (1951 Repl.), Section 61-635(b), the first sentence of which reads as follows:

> "(b) Any bank or trust company may make and file a proposal to become a depository and receive public funds of the county *in which its place of business is located* or of any municipal corporation in which its place of business is located. * * *" (Our emphasis)

It is clear, therefore, that, while a branch bank may not itself be designated as a depository, this alone is no reason for excluding the location of a branch bank as a place for deposit of public funds since the parent bank or trust company does have a place of business located at each point at which it maintains a branch bank. Therefore, in answer to your second question, if a branch bank is the only banking facility located in a municipality, it may carry forth its purpose of subserving public convenience and necessity by acting as the location at which deposits of public funds may be made, if its parent is designated depository, such branch being merely an agent of its principal bank or trust company which, in the legal sense, is the depository.

In view of the foregoing, it is unnecessary for me to answer your third and fourth questions.