Mr. Joe McCord, Director
Department of Financial Institutions
410 State House
Indianapolis 4, Indiana

Dear Mr. McCord:

This is in response to your recent letter in which you present the following situation and request advice thereon:

"This Department has recently been advised that the New Harmony National Bank, New Harmony, Indiana has filed an application with the Comptroller of the Currency for authority to remove its main banking office from New Harmony to Mount Vernon, Indiana and to establish a branch in New Harmony.

"The management of a State chartered banking institution, The Peoples Bank and Trust Company of Mount Vernon, has raised a question as to whether the permission of the Comptroller of the Currency, if granted in this case, would be in accordance with the Indiana Financial Institutions Act, and has asked this Department for an opinion covering the question."

Two provisions of the Federal law governing national banking associations are particularly relevant to this problem. They are Section 3 of Public Law 86-230, 73 Stat. 457 (1959), as found in 12 U. S. C. A. (1959 Supp.), § 30, concerning change of name and location, and Section 2 (b) of Ch. 753, 66 Stat. 633 (1952), as found in 12 U. S. C. A. (1959 Supp.), § 36 (c), concerning branches of national banking associations.

12 U. S. C. A. (1959 Supp.), § 30, provides as follows:

"Any national banking association, with the approval of the Comptroller of the Currency, may change its name or change the location of the main office of such association within the limits of the city, town, or village in which it is situated. Any national banking association, with the approval of the Comptroller of the Cur-
rency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty miles distant, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the Comptroller of the Currency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same. As amended Sept. 8, 1959, Pub. L. 86-230, § 3, 73 Stat. 457.” (Our emphasis)

12 U. S. C. A. (1959 Supp.), § 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 and doing business in the place where the proposed agency is to be 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 pro-
vided 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 com-
bined amount of capital stock and surplus, if any, re-
quired by the law of the State in which such associa-
tion 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. As
amended July 15, 1952, c. 753, § 2(b), 66 Stat. 633.”
(Our emphasis)

Your attention is directed particularly to the fact that
the Federal statute contains its own definition of the term
“branch” as used in said Section 36 and which is found in 12
U. S. C. A. § 36 (f), which reads 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.” (Our
emphasis)

It is my understanding that the fact pattern giving rise to
your request is that the New Harmony National Bank, New
Harmony, Indiana, does not now have a place of business at
Mount Vernon, Indiana, so that to effect such proposed change,
it would be both opening a new place of business in Mount
Vernon and retaining its present place of business at New
Harmony, the latter of which would be called a branch of the
New Harmony National Bank, whose designated main office
would become located at Mount Vernon.

It would appear that the New Harmony National Bank in
reality proposes to add an office at a new location, to wit: Mount Vernon, at which additional office deposits would pre-
sumably be received, or checks paid, or money lent, thereby
constituting the Mount Vernon office as a branch office within
the definition found in Section 36(f), *supra*, applicable to national banking associations. In practical effect, the true nature of the proposed operation would, by statutory definition, be the establishment of a branch bank, rather than, as ostensibly represented, the simple change of location of an established bank.

Although change of location of the main office of a national banking association, as authorized by Section 30, *supra*, is not in express terms made to depend upon the provisions of state law as in the case of the establishment of new branches, no such change of the main office of such an association “shall be valid until the Comptroller shall have issued his certificate of approval of the same.” It appears, therefore, that the right to change the main office is not absolute with a national banking association, but is dependent upon the exercise of discretion by the Comptroller of the Currency.

As heretofore indicated, the application of the statutory definition of the term “branch” as provided and required by Section 36(f), *supra*, would seem to constitute the proposed new location at Mount Vernon a branch office of a national banking association. Nevertheless, this determination involves an interpretation of the Federal statute which, of course, is the prerogative of the Federal authorities. However, it should be noted from Section 36(c), *supra*, that the right of a national banking association to establish and operate new branches is generally dependent upon whether such establishment and operation is expressly authorized to state banks by the law of the state in question, so that it appears that the Congressional intent is for the Comptroller of the Currency to follow the provisions of the law of the state in which the national bank is located, so as to conform with the policy of the particular state involved. Therefore, unless the statutory definition of the term “branch” which the Federal statute provides is applied as expressly stated in such Federal law, then a national banking association could always circumvent Section 36(c), *supra*, by which the establishment of branch banks is supposed to depend upon the state law, simply by designating the new location as the main office and the old location as a branch.

Assuming that the parties involved and the Comptroller of the Currency desire an interpretation by this office as to
whether such a proposal would be in accordance with the Indiana law, your attention is directed to the following. The Indiana law, as does the Federal law, provides generally that the principal office of a state bank may be changed to any place within the county upon approval by the Department of Financial Institutions.

See Indiana Acts of 1933, Ch. 40, Sec. 91, as found in Burns' (1950 Repl.), Section 18-503.

It should also be noted that the Indiana law does not contain a statutory definition of the term “branch” as there used, for which reason I am informed by you that the Indiana Department of Financial Institutions has adopted, as a matter of administrative practice, the definition of such term as contained in the Federal law. On the assumption that my understanding is correct, it would seem that, if the instant proposal were made by a state bank over which your department has supervisory power, your department would then construe it as constituting the opening of a branch at Mount Vernon.

Therefore, the question ultimately turns upon whether the Indiana law authorizes such a branch under the circumstances. For answer thereto your attention is directed to the Indiana Acts of 1933, Ch. 40, Sec. 224, as last amended by the Acts of 1959, Ch. 39, Sec. 2, as found in Burns' (1959 Supp.), Section 18-1707, which provides as follows:

“In all counties having a population of less than five hundred thousand [500,000] inhabitants, according to the last preceding decennial United States census, or in counties having three [3] or more cities of the second class, except as hereinafter otherwise provided, any bank or trust company may open or establish a branch bank in any city or town within the limits of the county in which the principal office of such bank or trust company is located, if there is no bank or trust company located in such city or town. In all counties, any bank or trust company which is located in a city the population of which exceeds thirty-five thousand [35,000] inhabitants, according to the last preceding United States census, may open within the corporate limits of such city one [1] branch bank for each two hundred
1960 O. A. G.

thousand dollars [$200,000] of the capital and surplus of such bank or trust company, actually paid in and unimpaired; or any bank or trust company which is located in a city the population of which exceeds seventeen thousand five hundred [17,500] but does not exceed thirty-five thousand [35,000] inhabitants, according to the last preceding decennial or special United States census, may open within the corporate limits of such city not nearer than one [1] mile to any existing bank or trust company one [1] branch bank for each two hundred thousand dollars [$200,000] of the capital and surplus of such bank or trust company actually paid in and unimpaired. In all counties having a population in excess of five hundred thousand [500,000] inhabitants according to the last preceding decennial United States census, and not having three [3] or more cities of the second class, any bank or trust company may open or establish a branch bank in any city or town within the limits of the county in which the principal office of such bank or trust company is located.

“No branch bank shall be opened or established without first having obtained the written approval of the department. The location of any branch bank may be changed at any time when such change of location is authorized by the board of directors of the bank or trust company and approved by the department. Any bank or trust company desiring to establish one [1] or more branches shall file a written application therefor, in such form, and containing such information as may be prescribed by the department. The Department is hereby authorized, in its discretion, to approve or disapprove such application. Before the department shall approve or disapprove any application for the establishment of a branch bank, as herein authorized, it shall ascertain and determine to its satisfaction that the public convenience and advantage will be subserved and promoted by the opening or establishment of a branch bank in the community in which it is proposed to establish such branch bank; in the case of counties having a population of less than five hundred thousand [500,000] according to the last preceding decennial United States
census, or in counties having three [3] or more cities of the second class, that there is no bank or trust company located in the city or town in which it is proposed to establish such branch bank, if the application is for a permit to open or establish a branch bank in a city or town other than that within which the applicant bank or trust company is located; that the applicant bank or trust company has satisfied the capital and surplus requirements, as hereinabove provided, if application is made by a bank or trust company located in a city the population of which exceeds fifty thousand [50,000] inhabitants, according to the last preceding United States census, for a permit to open or establish a branch bank in such city; and that the welfare of any other bank already established in such city will not be jeopardized. No branch bank may be opened if the real estate (as defined in section 174 of this act) of the bank or trust company establishing such branch bank will thereby exceed the capital and surplus of such bank or trust company actually paid in and unimpaired.” (Our emphasis)

Because Posey County, Indiana, in which New Harmony and Mount Vernon are situated, has a population of less than 500,000 inhabitants, the first sentence of the above-quoted section from the Indiana law would apply. Inasmuch as the Peoples Bank and Trust Company is already located at Mount Vernon, Indiana law would not permit the establishment of a branch of another state bank also at Mount Vernon.

By Burns’ 18-1707, supra, the Department of Financial Institutions of Indiana must generally find that the establishment of a branch bank, in those cases in which such branches may be authorized, will not jeopardize the welfare of any other bank already established in the city in which the branch is proposed to be opened. Furthermore, the first sentence thereof, positively presumes without the opportunity for rebuttal in any cases that, in counties having a population of less than 500,000 inhabitants, the establishment of a branch of a bank in a city or town within which another bank is already located will jeopardize the welfare of the “already established” bank. This conclusion is by reason of the plain fact that a branch is absolutely forbidden under such circumstances. That the wel-
fare of the existing bank would be jeopardized appears to be
the only reason for forbidding a branch under such circum-
stances. If a branch were to have such effect, it would appear
that the movement of the main office of a bank not theretofore
having a place of business in such city or town would more
certainly jeopardize the bank already established in such a
city or town.

Since the restrictive phases of the Indiana law pertaining
to the establishment of branches of state banks is for the pur-
purpose of protecting the sound financial condition of existing
state banks, it is appropriate to note that the location of the
state-chartered bank at Mount Vernon is the principal and
only office of such state banking institution, so that sufficient
competition could conceivably jeopardize its financial condi-
tion to such an extent as might destroy the state bank or cause
it of necessity to move elsewhere.

Construing Burns’ 18-503, supra, authorizing the change of
location of the principal office of a state bank upon the ap-
proval of the Department of Financial Institutions together
with Burns’ (1959 Supp.), Section 18-1707, supra, so as to
give meaning and effect to both sections, it is my opinion that
the Department of Financial Institutions would not have the
right to authorize the change of the principal office of another
existing state bank to Mount Vernon so long as the Peoples
Bank and Trust Company of Mount Vernon is there situated,
since to do so would completely obliterate the protection which
is intended to be afforded to the already established bank by
virtue of Burns’ 18-1707, supra, under which a branch bank
clearly could not be so located. It is, therefore, my opinion
that under the Indiana law neither a branch nor the main office
of an existing state bank could be opened at Mount Vernon in
competition with the Peoples Bank and Trust Company of
Mount Vernon.

As heretofore intimated, the proposal of the New Harmony
National Bank of New Harmony appears to be an indirect
means of attempting to establish a business location at Mount
Vernon in competition with the Peoples Bank and Trust Com-
pany there situated, merely by designating and establishing
the proposed new location at Mount Vernon as the “main
office” of the national bank, because it is perfectly clear that
a branch office of such national bank could not be so located
following the application of Indiana statutory law as required by 12 U. S. C. A., § 36 (c), supra.

Although again stressing that this is a matter for the Comptroller of the Currency to decide, and over which the Department of Financial Institutions of Indiana has no control, I wish to emphasize that if this proposal is approved by the Comptroller's office, then it may establish a precedent and means by which all national banking associations may circumvent state laws concerning location of branch banks in violation of 12 U. S. C. A., § 36 (c), supra, merely by the expedient of opening a new office in competition with a pre-existing bank and designating and establishing it as the main office, rather than as a branch.

OFFICIAL OPINION NO. 48

December 9, 1960

Dr. James B. Kessler
Resident Director
Commission on State Tax and Financing Policy
Room D-4 State House
Indianapolis, Indiana

Dear Dr. Kessler:

This is in reply to your letter on behalf of the Commission on State Tax and Financing Policy concerning a recommendation that legislation be enacted to authorize the assessment and/or collection of the property tax on one or more classes of mobile property (e.g. motor vehicles, mobile homes, pleasure boats, airplanes, etc.), by different procedures than those used for other classes of property in which my Official Opinion is requested in response to the following questions:

"1.) Can local units of government, or the State of Indiana, impose and collect registration fees, use and/or excise taxes levied on such property in lieu of ad valorem taxes?

"2.) Can local units of government, or the State of Indiana, impose and collect registration fees, use and/or excise taxes levied on such property in addition to ad valorem taxes?