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A SURVEY OF STATUTORY AND REGULATORY SCHEMES FOR COMMERCIAL BANK BRANCHING

INTRODUCTION

ALTHOUGH THE ABILITY of a commercial bank to establish a branch office has been permitted since at least 1898,¹ the National Bank Act of 1864, which did not specifically mention branches, was interpreted to preclude the establishment of national bank branches.² Eventually, in response to greatly increased activity in state bank branching,³ Congress acted and in 1927 passed the McFadden Act⁴ which introduced the concept of "competitive equality"⁵ between national banks and state banks which were members of the Federal Reserve System.

In 1933 Congress went one step further and permitted national banks to establish branches outside the municipality of their main banking facilities if the state permitted branching, with such national banks limited in any branching to the extent allowed by the state law.⁶ Thus, concepts of competitive equality and parity of provisions between state and national banks have remained with the banking industry since the early legislation.

This is not to deny, however, the power vested in state law by the 1933 legislation, because while federal law defines the term "branch"⁷ to include any branch bank or branch place of business "at which deposits are received, checks paid, or money lent," the restrictions as to location of the branch are

*This article is an outgrowth of the research and paper done by the author while a student in the Seminar on Select Problems in the Regulation of Financial Institutions. The author is indebted to Professor Ronald E. Alexander for his counsel and assistance. Letters of request were sent to the eighteen states represented as having the largest asset holdings by commercial banks. The request was for statutory and regulatory material relevant to branching in the state and a copy of a branch application. Thirteen states responded and these responses provided the basis for the analysis.

¹ Vestner, *Trends and Developments of State Regulation of Banks*, 90 BANKING L.J. 464,

² J. WHITE, BANKING LAW § 6 at 478 (1976).
465 (1973).

³ Wolfson & Stevens, *You Can Bank On It: An Analysis of Judicial Branch Bank Characterization and An Alternate Proposal*, 5 RUTGERS J. OF COMPUTERS AND LAW 389, 392 (1976).

⁴ 12 U.S.C. § 1 (1976).

⁵ See comments of the sponsor of the bill, Rep. McFadden, "As a result of the passage of this act, the national bank act has been so amended that national banks are able to meet the needs of modern industry and commerce and competitive equality has been established among all member banks of the Federal reserve system." 68 CONG. REC. 5815 (1927) (cited in *First Nat'l Bank in Plant City v. Dickinson*, 396 U.S. 122, 132 (1969)).

⁶ 12 U.S.C. § 36(c) (1976).

⁷ 12 U.S.C. § 36(f) (1976). Generally the cases have relied upon the functional definition contained within this provision. In *First Nat'l Bank in Plant City v. Dickinson*, 396 U.S. 122 (1969), the Court rejected any contention that a state's definition of branch must control the content of the federal definition of § 36(f). However, state law may be influential in deciding if a national bank may open a branch under § 36(c).

imposed by state law.⁸ The question of whether a particular service, office or facility is a "branch" within the meaning of a statute regulating the establishment of the branch turns on the wording of the particular state statute. Therefore, the definition of what precisely a "branch" bank is, has been an issue of extreme importance,⁹ and the functions a bank office performs are often of crucial significance in making this determination. In *St. Louis County National Bank v. Mercantile Trust Co.*,¹⁰ the definition of branch contained within 12 U.S.C. Section 36(f) was expanded,¹¹ with the court concluding that the three routine banking functions set forth by the statute were not to be the only indicia of branch banking and an office solely devoted to the performance of trust services could also constitute a branch.¹²

Not even moving away from a brick and mortar building can save an office from being classified as a branch if the functions¹³ which it performs are still those of a branch. Florida law, at the time of *First National Bank in Plant City v. Dickinson*,¹⁴ prohibited any branching by state banks. The plaintiff bank offered an armored car service and a secured receptacle for the receipt of monies intended as deposits. The plaintiff's customers, through a contractual relationship, arranged to have the armored car pick up cash and checks for deposit at their place of business or bring cash to them. Purportedly, the bank's car messenger would be the agent of the customer. In addition, the transmittal slip provided that the messenger was the agent of the customer and any funds transmitted were not deemed deposited until delivered at the banking house. Despite these indicia of an agency relationship, however, the court said it was "confronted by a systematic attempt to secure for national banks branching privileges which Florida denies to competing state banks."¹⁵

In *Independent Bankers Association v. Smith*¹⁶ the court held that

⁸ 12 U.S.C. § 36(c) (1976).

⁹ See Judge Henley's dissent in *St. Louis County Nat'l Bank v. Mercantile Trust Co.*, 548 F.2d 716, 720 (8th Cir. 1976), *cert. denied*, 433 U.S. 909 (1977), wherein he asserted that the majority opinion was allowing the state definition of what constituted a branch to control the federal question of interpreting 12 U.S.C. § 36(f).

¹⁰ *Id.* at 716.

¹¹ *Id.* at 718. The court did not rely on state law to determine the content of the term "branch" in § 36(f).

¹² *Id.* at 721. Judge Henley in his dissent disagreed with the expansive reading of § 36(f) believing that if Congress had wanted to include trust services in the definition of a branch, it would have done so.

¹³ See Wolfson & Stevens, *supra* note 3, at 423 for a discussion of the banking function test. This test "embodies a common sense approach that strives to establish a functional equivalency standard in ascertaining whether or not a facility qualifies as branch bank."

¹⁴ 396 U.S. 122 (1969).

¹⁵ *Id.* at 138.

¹⁶ 534 F.2d 921, 933 (D.C. Cir.), *cert. denied*, 429 U.S. 862 (1976).

Commercial Bank Communication Terminals (CBCTs) were branches as a matter of federal law.

It has been suggested that the possibility for major inconsistencies in interpretation now exist as a result of cases such as *Independent Bankers* and *St. Louis County National Bank*.¹⁷ If a situation similar on its facts to these two cases were brought under another state's law, such law not defining a trust office or CBCT as a branch, and the competitive equality for the national bank were threatened, a court would not be required to define the national bank office as a branch. Therefore, major differences in what constitutes a branch for national banks might exist in different states within the same federal circuit.

The need for such extensive control of branching has often been questioned. Governmental restrictions on branching expansion have generally been justified as necessary to prevent the evolution of highly concentrated market forms.¹⁸ However, many of these restrictions date back to the 1930's and the conditions of that era which gave rise to some of the most restrictive banking laws.¹⁹ Today, the economic premises upon which these banking regulations were based have been rendered generally obsolete. In addition, the whole technique upon which banking services are based has been dramatically changed by the use of computers, and factors such as the validity of geographical restrictions must be questioned when electronic transfers can transmit across the nation.²⁰

Political complexities also strongly influence banking laws, as small independent banks may maintain one position which best reflects their interests, while the larger metropolitan banks may vigorously support laws more advantageous to their operations.²¹ It has been said that "[l]egislative deliberations over these laws tend to be special interest battles between contending industry factions. The consumers of the financial services . . . [are] overwhelmed . . . and have left the matter to the banks and the politicians."²²

¹⁷ Note, *Definition of a Branch Under the McFadden Act: St. Louis County National Bank v. Mercantile Trust Co.*, 19 B.C.L. REV. 373, 384 (1978).

¹⁸ Vernon, *Regulatory Barriers To Branching and Merger and Concentration in Banking Markets*, 37 S. ECON. J. 349 (1971). This study identified local banking markets characterized by low concentrations of deposits in large banks and relatively weak regulatory barriers to branching and merger. While the premise was that no evidence refuted the major argument on concentration, the author nevertheless concluded that "[t]he best course [was] to retain these barriers, but to shape them so as to insure that they [permitted] the maximum bank sizes consistent with acceptable levels of concentration both nationally and in local banking markets." *Id.* at 354.

¹⁹ Baker, *State Branch Bank Barriers and Future Shock—Will the Walls Come Tumbling Down?*, 91 BANKING L.J. 119, 122 (1974).

²⁰ *Id.* at 122.

²¹ See Vestner, *supra* note 1 at 466.

²² Baker, *Bank Expansion: Geographic Barriers*, 91 BANKING L.J. 707, 712 (1974).

Two major arguments swirl around the controversies over branching. The first of these goes to concern about monopolies and the concentration of business, power, and assets. The second emphasizes the benefits and evils of competition, with particular focus on over-banking in an area and possible bank failure as a result.²³

In light of these various arguments, what recommendations have been made concerning state regulation of branching? The Hunt Commission report recommended that states allow both commercial banks and thrifts to expand on a statewide basis and that all special features protecting existing institutions in a market be eliminated.²⁴

These recommendations are apparently being examined and enacted in many states as examples will later demonstrate. Certainly regulators will have to assess the effectiveness of branching restrictions as electronic banking becomes more widely utilized and bank management will have to reconsider the advantages and disadvantages of holding companies as the branching laws change. Furthermore, even if all restrictions against branching were removed, practical problems still remain which will continue to temper the establishment of new branches.²⁵ One of these problems is the increasingly high construction cost of new branches. Another is that the development of Electronic Funds Transfer Systems (EFTs) will continue to have a dampening effect on branching in the traditional "bricks and mortar" sense because remote terminals are much less expensive. Finally, a "de novo" branch in a new area faces identity problems not encountered by banks traditionally serving an area.

STATUTE AND REGULATION ANALYSIS

The majority of the statutes and regulations examined did not specifically define a branch office. They are, however, more explicit in defining the variations allowed. A commonly shared feature is the inability of the office to initiate loans, while the receipt of deposits and loan payments as well as the authorization of withdrawals are permitted. The idea conveyed is of more limited banking services being offered at such offices. Both Michigan²⁶ and Florida²⁷ allow facilities; neither of these states defines the term but Michigan lists the functions such an office can perform, while Florida addresses itself to the physical location

²³ *Id.* at 712-13.

²⁴ THE REPORT OF THE PRESIDENT'S COMMISSION ON FINANCIAL STRUCTURE AND REGULATION (THE HUNT COMMISSION REPORT), *Chartering and Branching of Depository Financial Institutions* at 59, (Dec. 1971).

²⁵ Baker, *supra* note 19 at 131.

²⁶ MICH. COMP. LAWS 487.473 (1978).

²⁷ FLA. STAT. ANN. § 2(b)(2)(a) (West. Cum. Supp. 1978).

of the facility in relation to the parent bank. The Michigan statute imposes further restrictions on the utilization of facilities by requiring that no state or national bank or branch thereof may be in operation within five miles of the facility nor shall the facility be established in a city or incorporated village with a population of 1,000 or more. The most onerous Michigan restriction provides that the operation of such a facility shall not preclude any state or national bank from establishing and operating a branch in the same city or village and if such a state or national bank or branch is opened, it works as an automatic revocation of the existing bank facility.

Georgia law is unique not only in its allowance of branches, as well as bank facilities and bank offices,²⁸ but also in that the branch may sponsor either of these two variations. Under the statutory scheme a branch is "any additional principal place of business located in a county other than in the county wherein the parent bank is chartered."²⁹ Both the parent bank and the branch may have a "bank office"³⁰ and/or a "bank facility"³¹ which are defined as additional places of business located in the same county as the parent or branch. The difference between the two is that the former may offer complete banking services, while the latter may offer only limited banking service.

Perhaps the most unique of all branches is the bank station concept under Wisconsin law.³² The statute involved specifies that a parent bank may establish such a station with the services offered including the receiving of deposits, making of withdrawals, issuing of cashiers' and travelers' checks and the providing of safe deposit services. This station may be located in any town completely surrounded by outlying waters and having no bank either within the town or readily accessible.³³ The same statutory provision allows a parent bank located on a body of land surrounded by outlying waters to maintain and establish a bank station across such outlying waters if it will be within the same municipality. The caveat to this statute is essentially a warning to the Comptroller of the Currency that any interpretation of this provision to mean that a national bank may establish a bank station or branch in any place other than in one completely surrounded by outlying waters will render the provision void.

²⁸ GA. CODE ANN. § 13-203.1 (1975 & Cum. Supp. 1978).

²⁹ *Id.* at -201.1(b).

³⁰ *Id.* at -201.1(c).

³¹ *Id.* at -201.1(d).

³² WIS. STAT. ANN. § 221.04(1)(i) (West Supp. 1977).

³³ WIS. STAT. ANN. § 20.01(4) (West Supp. 1977). All waters within the jurisdiction of the state are classified as follows: Lake Superior and Michigan, Green Bay, Sturgeon, Sawyer's Harbor, and the Fox River from its mouth up to the dam at DePere are "outlying waters."

With the increasing implementation of electronic banking equipment, many statutes and regulations include provisions for this equipment. North Carolina law³⁴ provides for a "teller's window," a facility generally defined as allowing no loans or investments to be initiated and only the functions of a bank teller to be performed.³⁵ It may or may not be physically disconnected from the bank. Both "minibranches" and Communications Terminal Branch Offices (CTBOs) are included under New Jersey law.³⁶ A mini-branch is to occupy 500 or less square feet,³⁷ and to establish a CTBO the bank must submit an application³⁸ in which the proposed location, equipment, and cost of the CTBO are described. A checklist is also included that covers some of the unanswered legal issues involved in the use of this relatively new equipment.

Provisions allowing the state bank to branch outside of the state are specifically developed under California,³⁹ Pennsylvania,⁴⁰ and Massachusetts⁴¹ law. All three states require the approval of the state regulator before foreign branching occurs and California⁴² sets a statutory amount of 10% of capital and surplus which can be so invested. Massachusetts' law⁴³ is more restrictive than that of California in the total capital stock and surplus which must be available before branching will be allowed by requiring five million dollars while California⁴⁴ requires only "adequate shareholders' equity." Pennsylvania law⁴⁵ is silent as to any dollar amount, but does require that appropriate arrangements for the examination of such branches be made.

Only five of the states examined specified the dollar amount of the branch application fee. The highest cost was \$1,000,⁴⁶ while the lowest was \$300.⁴⁷

³⁴ N.C. GEN. STAT. § 53-62(b) (1975).

³⁵ Gup, *Review of State Laws on Branch Banking*, 88 BANKING L.J. 675, 676 (1971).

³⁶ N.J. STAT. ANN. § 9A-20 (West 1970 & Cum. Supp. 1977-78).

³⁷ N.J. ADM. CODE § 3:1-2.11 (Rev. 1976).

³⁸ N.J. STAT. ANN. § 9A-20(c) (West 1970 & Cum. Supp. 1977-78).

³⁹ CAL. FIN. CODE § 530 (West Supp. 1978).

⁴⁰ PA. STAT. ANN. tit. 7, § 907(b) (Purdon Supp. 1978).

⁴¹ MASS. GEN. LAWS ANN. ch. 172, § 11(c) (West Supp. 1978).

⁴² CAL. FIN. CODE § 535 (West Supp. 1978).

⁴³ MASS. GEN. LAWS ANN. ch. 172, § 11(c) (West Supp. 1978).

⁴⁴ CAL. FIN. CODE § 530 (West Supp. 1978).

⁴⁵ PA. STAT. ANN. tit. 7, § 907(b) (Purdon Supp. 1978).

⁴⁶ CAL. FIN. CODE § 501 (West Supp. 1978). *Fla. Rules of Dept. of Banking & Finance 3C-13.03* (1977) (on reserve with the AKRON LAW REVIEW).

⁴⁷ 10 PA. CODE § 23.11(b)(4) (1979). *Ga. Regulation on Application for Establishment or Relocation of Banks, Bank Offices & Facilities or Extensions of Existing Facilities 80-1-1-.02* (2) (1976). MASS. GEN. LAWS ANN. ch. 172, § 11(a) (West Supp. 1978) (only state with a \$500 fee).

PROCEDURE FOR PROCESSING BRANCH APPLICATIONS

With only two exceptions, the statutory and regulatory schemes did not specify any informal procedure for a notice of intent to file. Florida⁴⁸ provides for an initial review to see if the information on the application is substantially complete, while the request for application forms under Georgia⁴⁹ law must be in writing and must contain a precise statement as to the exact proposed location.

The most prevalent provisions occurring within the formal procedures for filing an application deal with notice and hearing requirements. Generally, the initial public notice required is one of a notice of the application to branch. The statutes differ on the two significant points of which party bears the notification burden and to whom the notice is to be sent or directed. The applicant bears the burden of making the notice in Pennsylvania,⁵⁰ Tennessee,⁵¹ and Massachusetts,⁵² while under Florida law⁵³ the regulator has this responsibility. New Jersey regulations⁵⁴ require that the notice be sent to the trade association of the involved financial institution and that it be published in the bulletin of that association; a more general requirement is notice in a paper of general circulation in the area of the proposed location.⁵⁵ While several schemes⁵⁶ detail precisely what the notice must contain, only Massachusetts⁵⁷ requires that the notice be published on three occasions. Massachusetts further requires a conspicuous posting of the application in the bank offices.⁵⁸ Three states⁵⁹ require proof of compliance with the notice provision, but only Pennsylvania provides a penalty if this is not done.

Notice of the public hearing on the application is required by Georgia, Pennsylvania, and North Carolina⁶⁰ with both Georgia⁶¹ and Pennsylvania⁶² law specifying that the expense of transcripts for the public hearing is to

⁴⁸ Fla. Rules of Dept. of Banking and Finance 3C-13.04(1) (1977).

⁴⁹ Ga. Regulations 80-1-1-.01 (1976) (on reserve with the AKRON LAW REVIEW).

⁵⁰ PA. STAT. ANN. tit. 7, § 904(b)(3) (Purdon 1967).

⁵¹ Tenn. Rules of Dept. of Banking ch. 0180-7-.03 (1976) (on reserve with the AKRON LAW REVIEW).

⁵² Mass. Rules Notice Requirement (March, 1978) (on reserve with the AKRON LAW REVIEW).

⁵³ Fla. Rules of Dept. of Banking & Finance 3C-13.04(2) (1977).

⁵⁴ N.J. ADM. CODE § 3:1-2.2(a) (Rev. 1978).

⁵⁵ See, e.g., Ga. Rules 80-1-1-.04(1) (1976).

⁵⁶ See, e.g., 10 PA. CODE § 23.13(a) (1979); Tenn. Rules of Banking ch. 0180-5.0 (1976). N.J. ADM. CODE § 3:1-2.2(a) (Rev. 1978).

⁵⁷ Mass. Rules Notice Requirement (March, 1978) (on reserve with the AKRON LAW REVIEW).

⁵⁸ *Id.*

⁵⁹ Tenn. Rules of Banking ch. 0180-5-.04 (1976); 10 PA. CODE § 23.13(b) (1979); Mass. Rules Notice Requirement (March, 1978).

⁶⁰ Ga. Rule 80-1-1.04(3); 10 PA. CODE § 3.7a (1979); N.C. ADM. CODE 3C.0201(5) (1977).

⁶¹ Ga. Rule 80-1-1-.02(5). ⁶² 10 PA. CODE § 23.13(b) (1979).

be borne by the party requesting the hearing. Under New Jersey⁶³ law, any objection to an application or request for a formal hearing must be filed within a ten-day period. If such a request is made, a hearing fee of \$100⁶⁴ must accompany the request. The rules further require that any objection be set out in detail at that same time.

While it is common practice to leave the option of a public hearing to the discretion of the regulatory agency, Indiana⁶⁵ law specifically provides that there shall be no public hearing on an application, while under North Carolina regulations⁶⁶ there must be a hearing after the banking commissioner has examined the application and made his recommendation and before the banking commission makes its decision. Only if an interested party contests the application within ten days following issuance of the notice of hearing is the Michigan commissioner⁶⁷ required to have a hearing on the application. Finally, while no formal hearings are provided for applications for a mini-branch, CTBO auxiliary, or limited facility branch under New Jersey⁶⁸ law, such a hearing is possible on a branch application if the objector fully complies with a detailed list of specified rules.⁶⁹

A notice of the decision must be sent to the applicants in a number of states⁷⁰ with the time required for such notice generally set either at sixty⁷¹ or ninety⁷² days. If the application is disapproved, the regulator is required to set out the reason for the denial.

Another common feature of the schemes deals with priority of the application. Pennsylvania⁷³ has a race statute with priority of application given solely on a first-come, first-serve basis. Both New Jersey⁷⁴ and Florida⁷⁵ consider applications filed concurrently as on an equal basis; New Jersey, however, limits its meaning of "contemporaneously" to a ten-day period, while Florida allows any application filed within a sixty-day period of the

⁶³ N.J. ADM. CODE § 3.1-2.3(a) (Rev. 1978).

⁶⁴ *Id.*

⁶⁵ IND. CODE ANN. § 17-4-7-2 (Burns Supp. 1976).

⁶⁶ N.C. ADM. CODE 3C.0201(4) (1977) (on reserve with the AKRON LAW REVIEW).

⁶⁹ *Id.*

⁶⁸ N.J. ADM. CODE § 3.1-2.3(a) (Rev. 1978).

⁶⁷ MICH. COMP. LAWS § 487.471 (1978).

⁷⁰ PA. STAT. ANN. tit. 7, § 905(c) (Purdon Supp. 1978); *Mich. Rule* 487.203 § 3(3) (on reserve with the AKRON LAW REVIEW); TENN. CODE ANN. § 45-443(2) (Supp. 1978); *Fla. Rules of Dept. of Banking and Finance* 3C-13.08 (1977).

⁷¹ PA. STAT. ANN. tit. 7, § 905(c) (Purdon Supp. 1978); *Mich. Rule* 487.203 § 3(3).

⁷² *Id.* Also having a 90 day notice period is Tennessee. TENN. CODE ANN. § 45-443(2) (Supp. 1978).

⁷³ 10 PA. CODE § 23.12 (1979).

⁷⁴ N.J. ADM. CODE § 3:1-2.14 (Rev. 1978).

⁷⁵ *Fla. Rule of Dept. of Banking and Finance* 3C-13.08 (1977).

original application to be given concurrent attention. Georgia⁷⁶ requires that an application similar to the one received by the state regulator be received by the appropriate federal regulator before that application is considered complete and entitled to priority.

Only New Jersey⁷⁷ specifically authorizes a prehearing conference. The hearing officer, in his discretion, may direct all parties to appear before him so as to simplify issues, stipulate the facts, and provide for an orderly disposition of the proceedings. New Jersey⁷⁸ law is also alone in requiring that for hearings on all applications except those for a new charter, the hearing shall be strictly limited to seven hours, three for the applicant and four for the objectors. Failure of the objectors to appear is treated as a withdrawal of the objection and the request.⁷⁹

While some states⁸⁰ only require that the commissioner send written notice of a final decision to the applicant, Michigan⁸¹ requires that the reason for the refusal be stated in the letter of denial.

CRITERIA TO BE UTILIZED IN ASSESSING APPLICATIONS

While the geographical criteria for assessing an application is not relevant in those states allowing statewide branching, they are of crucial importance in states limiting branching areas because they are usually specified in the statute.⁸² "Limited branch banking refers to branching that is restricted to a relatively small geographic area."⁸³ While both Michigan⁸⁴ and Wisconsin⁸⁵ authorize the establishment of a branch in a contiguous county, Michigan⁸⁶ allows the branch to be at a point greater than twenty-five miles from the parent if the county does not have a bank, while Wisconsin requires the branch to be within a distance of twenty-five miles from the bank.⁸⁷ Michigan further stipulates that no branch may be established in a city or incorporated village in which a state or national bank or branch is already in operation.

Because Illinois is a unit banking state, no branches are allowed. Illinois

⁷⁶ *Ga. Rule* 80-1-1.03(1).

⁷⁷ N.J. ADM. CODE § 3:1-2.12 (Rev. 1978).

⁷⁸ *Id.* at § 3:1-2.9(c).

⁷⁹ *Id.* at § 3:1-2.10.

⁸⁰ *See, e.g., Tenn. Rules of Dept. of Banking* ch. 018-7-.03 (1976).

⁸¹ *Mich. Rule* 487.20 § 3(5); *See* all PA. STAT. ANN. tit. 7, § 905(d) (Purdon 1967).

⁸² *See, e.g., TENN. CODE ANN.* § 45-443(1) (Cum. Supp. 1977).

⁸³ *Gup, supra* note 35 at 677.

⁸⁴ MICH. COMP. LAWS 487.471 (1978).

⁸⁵ WIS. STAT. ANN. § 221.04(1)(j) (West Supp. 1977).

⁸⁶ MICH. COMP. LAWS 487.471 (1978).

⁸⁷ WIS. STAT. ANN. § 221.04(1)(j)1 (West Supp. 1977).

law does allow facilities,⁸⁸ however, and the geographic restrictions placed on these facilities are detailed and very specific.⁸⁹

Closely tied to the criterion of geographical limits is the idea of population limitations. Under Indiana law⁹⁰ branching is limited to within the county of the parent, with the county population also considered; for example, if the county has a population of less than 500,000 or three or more cities of the second class, any bank may open a branch. Georgia law⁹¹ allows any parent bank located in any county with a population of 400,000 or more to establish a branch within any adjacent county if that county also has a population of 400,000.

A number of states require that once a branch has been authorized, it must be opened within a certain time period and if not so done, then the authorization is no longer valid. However, the law generally provides for an extension of this time by the regulator upon request from the parent bank.⁹² Two states require that the branch be opened within six months,⁹³ while two other states⁹⁴ allow the time for opening to be specified when the application is authorized, with no clue given as to the time period involved. Pennsylvania⁹⁵ is the only state which requires that certification be supplied to its regulatory agency that the branch has been opened.

The requirement of capital surplus is still another criterion used in assessing a branch application. California⁹⁶ requires that before a branch may be opened, the parent bank shall have and shall maintain, as long as the branch is operating, a paid-up capital in addition to the paid-up capital required by another statutory section.⁹⁷ The amount of additional paid-up capital required is usually \$50,000 under California law⁹⁸ and, since it is required by statute, it is further stipulated that the superintendent cannot approve an application until he has ascertained that the statutory capital amount has

⁸⁸ ILL. ANN. STAT. ch. 16½, § 105(15)(a) (Smith-Hurd Supp. 1978).

⁸⁹ *Id.* at § 105(15)(b).

⁹⁰ IND. CODE ANN. § 28-1-17-1 (Burns 1973).

⁹¹ GA. CODE ANN. § 13-203(c)(3) (1975 & Cum. Supp. 1978).

⁹² MASS. GEN. LAWS ANN. ch. 172, § 11a (West Supp. 1977).

⁹³ N.J. STAT. ANN. 9A-21(A) (West 1970 & Cum. Supp. 1977-78).

⁹⁴ *Mich. Rule* 487.203 § 3(4); FLA. STAT. ANN. § 659.06(1)(a)1 (West Cum. Supp. 1978).

⁹⁵ PA. STAT. ANN. tit. 7, § 905(d) (Purdon 1967).

⁹⁶ CAL. FIN. CODE § 502(a), (c) (West 1968).

⁹⁷ CAL. FIN. CODE § 380 (West 1968). The paid-up capital shall not be less than \$50,000 if the population of the city or locality in which the main office is located does not exceed 10,000. If the population is between 10,000 and 50,000 the paid-up capital shall be \$100,000, and it must be \$200,000 if the population is between 50,000 and 200,000. Finally if the population is over 200,000 the paid-up capital must be \$300,000.

⁹⁸ CAL. FIN. CODE § 503(b) (West 1968).

been met. The North Carolina⁹⁹ statute prohibits the commissioner from authorizing the establishment of any branch or teller's window unless the capital of the parent bank is sufficient to meet the statutorily requirement amount. This amount is related to the size of the town where the branch will be located and ranges from a low of \$100,000 for the parent bank and \$100,000 for the proposed branch in a town of 3,000 or less to a high of \$300,000 per principal and per branch when the city population exceeds 50,000.¹⁰⁰ Pennsylvania law requires, in addition to an amount stipulated under another code section,¹⁰¹ such other amounts of capital and surplus as the regulator may require at his discretion. Michigan¹⁰² also has a monetary standard of net worth, but this is highly technical and the Michigan statute does not specify a standard which must be met.¹⁰³

Before considering criteria more subjective than those discussed above, it is necessary to realize that the regulatory agency, by statute or rule, is generally given wide discretion in assessing all potential applications. Although the following criteria are frequently statutorily required, the question of their fulfillment is essentially one answered by an administrative agency. The answers to such questions of fulfillment frequently involve the consideration of a multiplicity of factors for which it is difficult to supply absolute guidelines.

Indiana¹⁰⁴ requires that the regulator determine that "the public convenience and advantage will be subserved;" New Jersey¹⁰⁵ requires that "the interests of the public . . . be served to advantage;" and Georgia¹⁰⁶ requires that, "the public need and advantage . . . be met." In discussing Michigan's¹⁰⁷ requirement of "necessity," Grunewald and Wein stated that this requirement was the one frequently attacked in contested applications and/or cited by the commissioner in denying applications.¹⁰⁸ They noted that the existence of adequate banking facilities, while mitigating against a finding of necessity, did not by itself justify denial;¹⁰⁹ however, an argument based on convenience to the public alone would be insufficient to satisfy

⁹⁹ N.C. GEN. STAT. § 53-62(c) (1975).

¹⁰⁰ PA. STAT. ANN. tit. 7, § 904(b)(ii) (Purdon Supp. 1978).

¹⁰¹ *Id.* § 1102 (Purdon 1967) & § 1103 (Purdon Supp. 1978).

¹⁰² MICH. COMP. LAWS 487.471 (1978).

¹⁰³ Grunewald & Wein, *Establishing a Branch Bank in Michigan*, 19 WAYNE L. REV. 1137, 1150 (1973).

¹⁰⁴ IND. CODE ANN. § 17-1-17-1 (Burns 1973).

¹⁰⁵ N.J. STAT. ANN. 9A-20.A(2) (West 1970 & Cum.).

¹⁰⁶ GA. CODE ANN. § 13-203.1(c)(1) (1975 & Cum. Supp. 1977).

¹⁰⁷ MICH. COMP. LAWS 487.471 (1978).

¹⁰⁸ Grunewald & Wein, *supra* note 103 at 1144.

¹⁰⁹ *Id.* at 1144 *citing* Moran v. State Banking Comm'r, 322 Mich. 230, 33 N.W.2d 772 (1948).

the requirement.¹¹⁰ Florida, both by statute¹¹¹ and rule,¹¹² requires not only that public convenience and necessity be served, but also that six additional regulatory standards be met.¹¹³

The reasonable promise of successful operation is a standard of both Michigan law¹¹⁴ and Florida regulation¹¹⁵ and is a factor that the North Carolina¹¹⁶ banking commissioner is to consider. This requirement involves a substantial value judgement and requires two related assessments. The first is an assessment of the total potential of an area; the second is an assessment of the proposed branch's ability to efficiently tap that potential. Although the Michigan law does not do so, both Florida¹¹⁷ and North Carolina¹¹⁸ specify in this standard that the promise of success and the assurance of reasonable solvency are not applied only to the prospective branch, but also to banks or branches currently operating in the area.

Florida also requires sufficient depth and quality¹¹⁹ of management, substantial compliance with all federal and state law,¹²⁰ and that the name of the proposed branch reasonably identify the branch so as not to confuse the public.¹²¹

ANALYSIS OF THE BRANCH APPLICATIONS

All of the branch applications received¹²² require a copy of the resolution of the board of directors or trustees authorizing the applications to establish a branch. They all also allow the attachment of supplemental information to the application which the regulator might find helpful in assessing the application. Another common requirement is the disclosure of "relationships and associations with the bank", *i.e.*, disclosure of any seller or lessors of land, buildings, or equipment indirectly or directly associated with the application and their precise relationship with the bank. The applications essentially cover a significant amount of the same informational material; the

¹¹⁰ *Id.* at 1146.

¹¹¹ FLA. STAT. ANN. § 659.06(1)(a)1. (West Cum. Supp. 1978).

¹¹² Fla. Rule of Dept. of Banking and Finance 3C-13.041 (1977).

¹¹³ *Id.*

¹¹⁴ MICH. COMP. LAWS 487.471 (1978).

¹¹⁵ Fla. Rule of Dept. of Banking and Finance 3C-13.07(e) (1977).

¹¹⁶ N.C. GEN. STAT. § 53-62(b) (1975).

¹¹⁷ Fla. Rules of Dept. of Banking and Finance 3C-13.07(b),(c),(e) (1977).

¹¹⁸ N.C. GEN. STAT. § 53-62(b) (1975).

¹¹⁹ Fla. Rule of Dept. of Banking and Finance 3C-13.07(d) (1977).

¹²⁰ *Id.* at 3C-13.07(g).

¹²¹ *Id.* at 3C-13.07(f).

¹²² Ten state applications were received and reviewed; these were from California, Georgia, Indiana, Mississippi, North Carolina, New Jersey, Pennsylvania, Tennessee, and Wisconsin (on reserve with the AKRON LAW REVIEW).

difference is in their method of classifying this material. For example, while the Convenience and Needs section of the Georgia application includes the economic and demographic data necessary for the proposed location, this material is generally covered under a separate heading in the other states' applications. Another difference is the manner in which the information is collected; some states use a highly structured application form, while others use one with more open-ended questions. Finally, both Florida and North Carolina use the Federal Deposit Insurance Corporation branch application, with Florida requiring some additional information.

All of the applications deal with the two standards of adequacy of capital structure and public convenience. Under the heading of "Adequacy of Capital Structure" the Indiana application requires the following information: capital structure, minimum state law capital requirements, estimated deposits for the branch, and the total capital accounts. The Pennsylvania application, under the heading of "Public Convenience," requires a statement of the reasons for filing the application factors considered to support of the need for the new branch.

Financial information is required in all of the applications. This includes at least a statement of the parent bank's condition, a list of the main office and existing branches, the proposed investment in or rental of furniture, facilities, and equipment and a statement of the legal fees.

Marketing data is required in all of the applications, including such residential information as the number of single-owner homes or owner-occupied homes, the number of large apartment buildings or hotels or motels in the area, the median family income and the general economic development of the residential area. Information of a similar nature is sought about the industrial or commercial and agricultural trade of the area. Two states¹²³ request information on colleges and universities, churches and synagogues, and the resort trade of the area. While the economic development of the area for a specified period of time is generally requested, the Pennsylvania application is the only one requiring the data for the preceding ten years, a more common requirement being for a five-year period. The New Jersey¹²⁴ application is the only one requiring several audio-visual supports, as well as a zoning map for the community, a photograph of the proposed site, and a tax map.

All of the applications require at least a list of all competitors in the primary service area. Some specify more detailed information; Pennsyl-

¹²³ The applications for Michigan and Pennsylvania.

¹²⁴ The Michigan application did require two maps, one to show the location of the proposed branch and all existing branches or banks in the area. The second was to show governmental boundaries. Wisconsin required a map of the area for the proposed application.

vania, for example, requires a summary of interest rates on all types of loans from all the banking institutions within the area and for all the savings and loans within the area. New Jersey's application requests information as to rates, services, hours, and asset size from all financial offices within the trade area or within a three mile radius from the proposed branch.

Finally, all the applications require projections. Several states request information on the projected functions of the management and staff, the name of the proposed manager, and Georgia even requests the proposed names of the local advisory board. The Wisconsin application most explicitly develops this line of questions. It requests information on the name, title, employment record and bank experience of the intended managing officer, as well as his anticipated annual salary, and a summary of his intended responsibilities and authority. Most of the applications, however, focused greater attention on the projected business of the branch, the deposit and loan potential, the estimated average deposits, future earning prospects, and the estimated income and expenses.

TERMINATION OF A BRANCH

Only the chartering agent may close a bank.¹²⁵ For closing national or state bank branches state law is the operative one and only six of the responding states supply statutory guidelines.¹²⁶ All states require that branch closing be authorized by a resolution of the bank owners or board of directors, with the regulator's approval needed at some point prior to the closing.

The most common feature of the termination schemes is one of public notice. This requirement in some statutes simply compels the following of whatever method is prescribed by the regulations.¹²⁷ However, a stipulation of where the notice is to be made, and the frequency of this notice is required by other schemes. For example, North Carolina¹²⁸ requires the publishing of the notice in a newspaper serving the community once a week for four consecutive weeks; Michigan¹²⁹ requires a "conspicuous and continuous" display of the notice of the discontinuance date. This includes posting in the office lobbies of both the branch and the parent bank for a minimum of fourteen days before the discontinuance. California¹³⁰ law re-

¹²⁵ Skillern, *Closing and Liquidation of Banks in Texas*, 26 S.W.L.J. 830, 831 (1972).

¹²⁶ CAL. FIN. CODE § 510 (West Supp. 1968); MASS. GEN. ANN. ch. 172, § 11(e) (West Supp. 1978); MICH. COMP. LAWS § 487.474 (1978); N.C. GEN. STAT. § 53-62(e) (Cum. Supp. 1975); N.J. STAT. ANN. § 9A-21B (West 1970 and Cum. Supp. 1977-78); PA. STAT. ANN. tit. 7, § 905(e) (Purdon 1967).

¹²⁷ See, e.g., CAL. FIN. CODE § 510 (West Supp. 1968); PA. STAT. ANN. tit. 7, § 905(e) (Purdon 1967).

¹²⁸ N.C. ADM. CODE 3C.0202 (1977).

¹²⁹ MICH. COMP. LAWS § 487.474 (1978).

¹³⁰ CAL. FIN. CODE § 510 (West 1968).

quires the longest period of notice (ninety days), while New Jersey¹³¹ requires no notice at all.

Two schemes¹³² require that the bank in the letter to the commissioner state how the needs and convenience of the community shall be served. Only North Carolina¹³³ provides for a public hearing on the matter and then only if requested by any interested party. Pennsylvania law¹³⁴ requires that the institution deliver a certificate of discontinuance on a prescribed form to the regulator after the branch is closed. However, the most extensive regulatory scheme for termination is found under the Massachusetts regulation which enumerates the specific information that the bank desiring termination must submit in documentation.¹³⁵

CONCLUSION

The statutory and regulatory schemes for commercial bank branching by various states contain the common features of defining the allowable variations of branches and the limiting of banking services performed at a branch. The state schemes differed, however, in the completeness of information supplied on such matters as the restrictions on utilization of the facilities and the dollar cost of branch application fees.

Much of the same information was required on the various state branch application forms; all requested a copy of the resolution authorizing such applications and disclosure of relationships and associations with the banks by certain specified parties. What differed among the applications was the method of classifying the material and the construction of the applications.

Notice and hearing requirements were the most prevalent provisions found in the various state procedural guidelines for analyzing branch applications. Significant differences existed as to which party bore the burden of notification, where the notice was to be sent, and when hearings would be conducted. Notice of action on the application and priority of applications also received different treatment under the various schemes.

Criteria considered both objective and subjective were utilized in assessing the applications. Objective criteria were considered to be both geographical and population criteria, time limitations, and capital surplus requirements. Subjective criteria were considered to be those of public convenience and need and the reasonable probability of successful operation.

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¹³¹ N.J. STAT. ANN. 9A-20B (West 1970 & Cum. Supp. 1977-78).

¹³² N.C. ADM. CODE 3C.0202(1) (1977); COMP. LAWS § 487.474 (1978).

¹³³ N.C. ADM. CODE 3C.0202(2) (1977); Massachusetts may require a public hearing at the discretion of the regulator.

¹³⁴ PA. STAT. ANN. tit. 7, § 905(e) (Purdon 1967).

¹³⁵ MASS. GEN. LAWS ANN. ch. 172, § 11(e) (1978).