

BANKS:

By virtue of Senate Bill No. 146 of the 76th General Assembly, effective September 28, 1971, a bank in an unincorporated community is not prohibited by law from having a drive-in or walk-up facility in that community when such a facility is within four thousand yards of the bank's main banking house even though in measuring that distance the line of measurement crosses through an incorporated city, town or village.

OPINION NO. 394

August 19, 1971

Mr. H. Duane Pemberton  
Commissioner of Finance  
Division of Finance  
Room 1201, 12th Floor  
Jefferson Building  
Jefferson City, Missouri 65101



Dear Mr. Pemberton:

This is in response to your request for an opinion concerning measurement of the distance between a main banking house and a drive-in or walk-up facility which a bank proposes to establish.

Your request points out that there is a bank in an unincorporated community which desires to establish a drive-in or walk-up facility less than four thousand yards (the maximum distance permitted under Senate Bill No. 146, 76th General Assembly, effective September 28, 1971) from its main banking house, the facility to be in the unincorporated community; but in measuring the distance between the main banking house and the facility, in order to stay within four thousand yards, it is necessary to measure the distance along a line that begins with the main banking house in the unincorporated community and continues into an incorporated city and then out of the incorporated city into the unincorporated community where the proposed facility is intended to be located.

Senate Bill No. 146 of the 76th General Assembly which repeals Section 362.107, RSMo 1969, and enacts in lieu one new section relating to the same subject. The provisions of such bill become effective September 28, 1971. The provisions of such bill relevant to this inquiry are as follows:

"362.107. 1. Any other law of this state to the contrary notwithstanding, every bank and every trust company organized under the laws of this state which has the corporate power

Mr. H. Duane Pemberton

to receive deposits may, upon compliance with this section, maintain and operate separate and apart from its banking house one facility for drive-in or walk-up service, where only checks may be paid, deposits received, deposits withdrawn, change made, exchange made, bank money orders issued and loan payments received.

"2. No such bank or trust company may maintain or operate:

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"(2) Such a facility located more than four thousand yards from the main banking house; or

"(3) Such a facility outside the limits of the city, town or village or unincorporated community in which its banking house is located; . . ."

Based on the portions of such bill quoted above, it is apparent that the General Assembly requires that a drive-in or walk-up facility be not more than four thousand yards from the main banking house and in those situations where the main banking house is in an unincorporated community the drive-in or walk-up facility be located in that unincorporated community. However, in measuring the distance between the main banking house and the drive-in or walk-up facility, we do not read the statute to prohibit measuring along a line which goes through a portion of an incorporated city so long as the main banking house and the drive-in or walk-up facility are both in the same unincorporated community. Such a conclusion is based on the fact that paragraph 2 of section 2 of Section 362.107 sets a distance limitation for the drive-in or walk-up facility without making mention of where, within such distance, such a facility may be located (cf. Paragraph 4 of Section 2 limiting the distance such a facility may be located with respect to an existing bank). Paragraph 3 of section 2 requires that the drive-in or walk-up facility be in the same city, town, village or unincorporated community as is the main banking house, but that paragraph sets no limitation as to the distance between the main banking house and the drive-in or walk-up facility. It would violate the definite language of each of those paragraphs to read them in such a fashion as to hold that the legislature has prohibited a drive-in or walk-up facility when, in measuring the distance between the facility and the main banking house, the line of measurement goes through a city, town or village.

Mr. H. Duane Pemberton

It should be noted that in answering this opinion request we limit ourselves strictly to the specific question asked and do not consider whether the bank is otherwise entitled to establish a drive-in or walk-up facility.

CONCLUSION

It is the opinion of this office that by virtue of Senate Bill No. 146 of the 76th General Assembly, effective September 28, 1971, a bank in an unincorporated community is not prohibited by law from having a drive-in or walk-up facility in that community when such a facility is within four thousand yards of the bank's main banking house even though in measuring that distance the line of measurement crosses through an incorporated city, town or village.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly,



JOHN C. DANFORTH  
Attorney General