

WHAT THE BANK EXPECTS OF ITS ATTORNEY

M. Monroe Kimbrel
Executive Vice President
The First National Bank of Thomson

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Attorneys have been constructive thinkers and actors in the development of our modern civilization. They have been the draftsmen and generally the moving spirits in the development of our Declaration of Independence, our Constitution, the modern corporation, insurance company, banks, and other forms of organization which have contributed so much to our standard of living.

Creative opportunities for bank attorneys exist in the present decade as never before. There has been an awesome growth in the quantity of legal problems of most banks. The complexities of everyday relations with stockholders, customers, employees, competitors and with local, state, and federal regulatory authorities are such as to demand the counsel of experienced attorneys who are familiar with all aspects of banking activities. The sheer volume of law under which banks must operate increases with every meeting of our legislators. Even in small banks the attorney has become a necessity and it is essential bank attorneys develop a breadth of vision and depth of perspective geared to these new and growing opportunities.

Various arrangements exist between banks and their attorneys. A few attorneys represent banks very much as they represent other clients. They represent them in litigation which they must bring and to which they are made a party and advise as to legal questions only when they are requested to do so. Some of them examine titles, draw the papers, and close loans. They serve merely

as technicians. This is the easiest and perhaps the most remunerative way to practice law. In some cases, bankers appear to prefer counsel to work on this basis. In my opinion, it is not the best for all concerned.

Other attorneys for banks, whether they are on the board of directors or not, make it a point to attend directors meetings and keep themselves fully informed as to all of the facts and circumstances of the operation of the bank. They make at least an annual examination of every legal and accounting form in use by the bank including signature cards, notes, bills of sale, and mortgage forms, resolutions, and other evidence of corporate acts. They make constructive suggestions for needed improvements or for the development of new forms and procedures.

In many cases, attorneys prepare memoranda for the guidance of bank employees in certain transactions; for example, in dealing with joint tenancies, prepayment or default provisions in state laws, trust accounts, bankruptcy, married women, minors, incompetents, and in other situations. Common pitfalls often are listed as well as means for their avoidance. Such precautions on the part of the attorney invariably save time and money later for the bank. Whatever the working arrangement, however, certain qualities in the attorney are fundamental.

A good attorney must be honest and reliable. One of his greatest professional responsibilities is to be constructive. He has a duty to himself, to his bank, and to the general public interest to assist the bank in finding legal ways and means to render more and better service as well as to avoid pitfalls and illegal action. The most responsible attorney will exercise his best efforts to learn all of the facts and circumstances, to find means to render the best possible service, and to enable his bank to render the best possible service both in its interest and the public interest.

A primary duty of the attorney, of course, is to handle all of the litigation

of the bank and to advise on all legal questions, but where he is intimately informed many things can be done and are more likely to be done in a manner which will get the best results and save time and money. It is essential, therefore, for bank counsel to be familiar with current laws and court decisions dealing directly or indirectly with the many problems of banking. Such an attorney is not likely merely to give negative advice, but is more likely to give constructive legal advice and to assist in initiating improved procedures - enabling the bank to render better service to its customers and in the public interest.

The bank attorney should keep abreast of tax laws and regulations so the bank can be guided to avoid the imposition of unnecessary taxes. Any changes and developments should be brought to the attention of bank officers promptly, particularly when there is any substantial change. Today, more and more banks are finding it most important to be currently advised about their liability under the Fair Labor Standards Act. The attorney can do the bank a real service in being adequately informed in this field.

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The bank expects from its attorney an infinite variety of opinions on its rights and obligations in situations arising unexpectedly during daily routine activities. In this category, he might be expected to reply promptly to a question such as "Can the bank attach the car of a man about to leave town, and who is suspected of having cashed a forged check?" Then again, the attorney might be asked "A properly drawn check has been presented for payment by the payee, but the check has not been endorsed and the payee refuses to endorse it. Should it be paid?". These are only a couple of the numerous instances when a bank needs prompt legal opinion since substantial losses could result from making the wrong decision.

The bank is obliged to grope its way through a maze of legal pitfalls. There are the things it may properly do and the things it may not do at all. There

are the things it may do only in certain ways and in certain places and at certain times. There are innumerable legal questions that must be answered before a bank may dare to venture upon the most innocuous transaction. Without the firm and skillful guidance of attorneys, a bank often would find it has run aground on dangerous shoals.

Since banks are quasi-public institutions there is a duty in a very real sense to the public. Counsel would do well to keep abreast of civic matters and current trends in political, social, and economic thinking. At the same time he must use discretion in a public discussion of matters of this nature to be sure his personal views are not necessarily construed as those of his bank.

The public nature of a bank's service in a community requires that it maintain correct and friendly relations with governmental and civic authorities. To the extent the attorney, in addition to his other professional activities, participates in public affairs, he should be helpful in presenting the bank's viewpoint whenever the occasion arises. Of course, such attorney should not be required nor expected to compromise himself should he be serving as a governmental official, but since a bank's welfare is not adverse to the public interest, there should be few occasions when any such conflict of loyalties or interest may arise.

With the confines of legal ethics and practices, and where there is no possible conflict of interest, the attorney should encourage his clients to become customers of his bank.

Far from remaining static, the attorney's vision should grow along with his increased responsibilities and his bank's expanded business operations. Experience has proved time and again that the positive approach to law is the best approach. It should never be forgotten that one of the attorney's greatest professional responsibilities is to be constructive.

Bit off ears A bank may rightfully expect its attorney to exercise his ingenuity and

diligence to permit the bank to accomplish the business end desired. I do not mean by this that a bank attorney should be expected to find ways of circumventing the law or banking regulations, but he certainly should diligently exercise his ingenuity to permit the bank to accomplish its expressed desire.

Bankers are aware the attorney, generally speaking, is reluctant to say that without question there is no jeopardy involved in taking some doubtful step. Unless there is some clear statutory provision, the attorney can only give his opinion. In such case the attorney should not evade the responsibility of a direct answer with too many qualifications and reservations. The banker is not interested in the fine nuances of legalistic reasoning, but since he cannot get a definite "yes" or "no" answer, his counsel should advise as nearly as possible the amount of risk that is being taken. Then, the banker can consider the benefits to be gained and weigh them with the business risks.

It is a common observation that the attorney all too frequently is inclined to set up a procedure which, though sound in law, is too cumbersome for a bank lending officer to handle. The attorney must, therefore, protect his bank by recommending reasonable safeguards without requiring the bank to work itself to death before ^{it} can make a loan or perhaps exhaust the applicant by legal technicalities.

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Many attorneys tend to be paid for bank services by other work which is referred by the bank so that the bank's customers ultimately pay for the legal services of the attorney to the bank. This, we think, is a mistake. The bank should pay a fee commensurate with the work which the bank suggests, leaving the customer free to employ his own attorney when he wants one and maintaining a cordial and amicable relationship between the bank, the customers, and the attorney.

The attorney should have a retainer from the banks sufficient to justify him using enough of his time to keep up with all of the state and Federal banking

laws, regulations, and forms, to make studies of improved procedures and forms, and to attend clinics and conventions as further education. In addition to a retainer which is paid for the time to keep up and to give general advice, the counsel of the bank should receive specific fees which should be reasonable for each specific litigation and extraordinary transactions involving substantial time.

Banks are usually owned by hundreds, and in many cases, thousands of stockholders. The stockholders, therefore, constitute the actual clients of the bank's attorney. One of the most significant functions of the job, although it may not at first appear to be a legal function, is the duty of the attorney to help guide the bank's officers in the fulfillment of responsibilities to the stockholders, to the community in which the operates and to the nation as a whole. We live in an age of responsibility and this is more than merely a responsibility to comply with the country's laws. It is a responsibility to behave in such a way as to further the interest of all the people.

These are generally mixed questions of law, business, finance, and public relations. To answer these questions intelligently, the attorney for the bank may well feel that he has to be something of an engineer, an accountant, a public relations authority, a politician, and a prophet. But as an attorney, he is used to dealing with personalities and questions of fact as well as questions of law. Accordingly, the challenge is one he welcomes.