

FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-6487

January 28, 1930.

SUBJECT: Branches of National Banks.

Dear Sir:

There is attached hereto, for your information, copy of an opinion recently rendered by the Attorney General, with regard to the branches which may be maintained by a national bank formed as a result of a conversion of a State bank or of a consolidation between a State and a national bank.

Very truly yours,

E. M. McClelland,
Assistant Secretary.

Enclosure.

TO THE CHAIRMEN AND GOVERNORS OF ALL F. R. BANKS.

DEPARTMENT OF JUSTICE,
Washington.

December 23, 1929.

Sir:

I have the honor to reply to your letter of August 6, 1929, wherein you state that the Comptroller of the Currency has before him the application of a State bank, operating in a town of slightly under one hundred thousand population, to convert into a national bank, and that said State bank is now operating three branches, one of which was established subsequent to the passage of the Act of February 25, 1927, known as the "McFadden Act". You request to be advised (a) whether the branch established subsequent to February 25, 1927, must be discontinued upon conversion of the State bank into a national bank; and (b) whether the Comptroller of the Currency is authorized, after conversion of the State bank, to grant two new branches to the national bank established by such conversion, such new branches being in addition to those retained upon conversion.

Section 7 of the Act of February 25, 1927, c. 191, 44 Stat. 1228, amends Section 5155 of the Revised Statutes (Title 12, Sec. 36 U. S. C.) to read in part as follows:

(b) If a State bank is hereafter converted into or consolidated with a national banking association, or if two or more national banking associations are consolidated, such converted or consolidated association may, with respect to any of such banks, retain and operate any of their branches which may have been in lawful operation by any bank at the date of the approval of the Act.

(c) A national banking association may, after the date of the approval of this Act, establish and operate new branches within the limits of the city, town, or village in which said association is situated if such establishment and operation are at the time permitted to State banks by the law of the State in question.

(d) No branch shall be established after the date of the approval of this Act within the limits of any city, town or village of which the population by the last decennial census was less than twenty-five thousand. No more than one such branch may be thus established where the population, so determined, of such municipal unit does not exceed fifty thousand; and not more than two such branches where the population does not exceed one hundred thousand. In any such municipal unit where the population exceeds one hundred thousand the determination of the number of branches shall be within the discretion of the Comptroller of the Currency.

(e) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

Paragraph (b) provides in effect that upon the conversion of a State bank into a national banking association, the banking association resulting from the conversion may retain any branches which the converted bank may have had in lawful operation on February 25, 1927. This provision is permissive in character, and the inference is plain that any branch or branches established or acquired subsequent to February 25, 1927, by the converting bank

must be relinquished upon conversion.

After conversion into a national banking association the converted bank comes within the provisions of paragraphs (c), (d) and (e) of section 7 of said Act. Paragraph (c) permits national banking associations to establish branches, subsequent to February 25, 1927, within the limits of the city or town in which the parent bank is located, if the State laws permit the establishment of such branches by State banks, subject, however, to the conditions contained in paragraphs (d) and (e). Such conditions are that no national banking association shall establish more than two such branches where the population of the city or town in which the bank is located exceeds fifty thousand and does not exceed one hundred thousand; and that the establishment of the branch or branches is with the consent and approval of the Comptroller of the Currency.

It follows, therefore, that when a State bank, converting into a national banking association, has received its charter as a national banking association (it being located within a city the population of which is more than fifty thousand and less than one hundred thousand) it may apply for, and with the consent and approval of the Comptroller of the Currency establish not more than two branches within the limits of the city where said bank is located, provided that the law of the State permits the establishment of such branches by State banks.

The branches it may be authorized to establish under paragraphs (c) and (d) are in addition to those retained under paragraph (b). In the case you submit, the two branches established by the State bank

prior to February 25, 1927, and which it has the right to retain on the conversion into a national banking association, are located in the city where the main bank is situated. The result of this construction of the statute is that this converted bank may add two new branches, making four in all in the city, although a new national bank could establish and maintain only two. Such an inequality is produced, not by the mere conversion, but by action after conversion, and there may be doubt as to whether the Congress intended such a result, but the terms of the statute seem to justify this construction. However, Congress must have had in mind the safeguard contained in paragraph (e), which requires the consent and approval of the Comptroller of the Currency to the establishment of new branches.

Congress has used the word "established" in paragraph (d) and has refrained from using the word "maintain". If it intended that old branches retained upon conversion should be counted in determining the number of new branches to be allowed under paragraph (d), appropriate words should have been added to paragraph (d). Furthermore, branches in other cities previously established and retained upon conversion, could not be counted to reduce the number of new branches in the city in which the parent bank is located, allowed under paragraph (d), without placing a converted bank at a disadvantage in respect of the number of branches allowed in the city of its location. It is apparent that to derive from the statute an implication that the number of branches retained on

conversion shall restrict the number of new ones allowed under paragraph (b) would not remove inequalities in powers between converted banks and new national banking associations. The resulting conclusion is that the statute should be taken literally.

In the case submitted it may be that the Comptroller of the Currency would approve an application by the national bank resulting from the conversion to establish as one of the new branches permitted by paragraph (c) the very branch which the State bank would be required to relinquish upon conversion. If such be the case, I see no objection to the Comptroller of the Currency so indicating in advance, in order that an application to that end might be made by the resulting national bank, and approved, substantially simultaneously with the conversion. If this were done the temporary cessation of business at the branch attendant upon its formal relinquishment would not result in any practical inconvenience.

In the second case submitted you state that there is now pending before the Comptroller of the Currency the application of a State bank, having two branches in lawful operation prior to February 25, 1927, to consolidate with a national banking association, having two branches authorized by the Comptroller of the Currency under the provisions of paragraph (c) of section 7 of said Act. You state that both of the banks are located in a city the population of which is slightly less than one hundred thousand, and that their application for consolidation provides

for the retention of all four branches by the consolidated bank. You request to be advised whether the Comptroller of the Currency is authorized to approve the retention of the four branches by the consolidated bank.

Section 1 of the Act of February 25, 1927, supra, amended the Act of November 7, 1918, by adding thereto a new section (section 3) which provides for the consolidation of State banks with national banking associations as follows:

Sec. 3. That any Bank incorporated under the laws of any State, or any bank incorporated in the District of Columbia, may be consolidated with a national banking association located in the same county, city, town, or village under the charter of such national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate,***

Paragraph (b) of section 7 of the Act of February 25, 1927, supra, provides that if a State bank, having branches established prior to February 25, 1927, is consolidated with a national banking association the consolidated association may retain such branches. Paragraph (c) of said Act provides that a national banking association may, after February 25, 1927, establish branches within the limits of a city or town in which said association is located. This permission is subject to the conditions provided in paragraphs (d) and (e).

It appears from the statement of facts that the national banking association with which the State bank proposes to consolidate has availed itself of the foregoing provision and, with the approval of the Comptroller of the Currency, has established

two branches as provided by the statute. As the State bank upon consolidation with the national banking association will cease to exist; its branches, established prior to February 25, 1927, will become the branches of the consolidated bank.

The provisions and implied limitation contained in paragraph (b) of section 7 of the Act apply to the consolidation of a State bank with a national banking association to the same extent and with equal force as they apply to the conversion of a State bank into a national banking association; namely, that "any of their branches which may have been in lawful operation by any bank at the date of the approval of the Act" may be retained by the consolidated bank, and any branches established by either of the consolidating banks subsequent to the date of the approval of the Act must be relinquished, notwithstanding the branches of the national banking association were established pursuant to the authority contained in paragraph (c), and with the consent and approval of the Comptroller of the Currency. This is the plain import of the language of the statute, and there is nothing contained in the Act which justifies a departure from its exact terms.

When the proposed consolidation has been consummated, the consolidated bank may apply for and, with the consent and approval of the Comptroller of the Currency, establish not more than two branches within the limits of the city where said bank is located, provided the law of the State permits the establishment of branches by State banks.

As the national bank involved in the consolidation preserves its corporate identity and existence, I see no objection to its filing an application for leave to establish two new branches simultaneously with the filing of application for approval of the consolidation, so that if the Comptroller approves, there may be avoided the useless formality of first relinquishing and then immediately reestablishing the branches which were subject to relinquishment under paragraph (b).

Respectfully,

(Signed) William D. Mitchell.

Attorney General.

The Honorable,

The Secretary of the Treasury.