



Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-40

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**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS OF
SUN WORLD, NATIONAL ASSOCIATION, EL PASO, TEXAS
August 2, 1996**

I. INTRODUCTION

On May 9, 1996, Sun World, National Association, El Paso, Texas ("Sun World") filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to change the location of its main office from El Paso, El Paso County, Texas, to Santa Teresa, Dona Ana County, New Mexico, under 12 U.S.C. 30 (the "Relocation Application"). The location in Santa Teresa is approximately one-half mile from the city limits of El Paso. During and after the relocation of its main office, Sun World would retain its two existing branches in El Paso. On May 9, 1996, Sun World also applied to the OCC for approval, following the relocation of its main office, to establish a new branch at the former location of its main office in El Paso under 12 U.S.C. 36(c) (the "Branch Application").

Sun World has approximately \$134 million in assets and \$111 million in deposits and currently operates two branches in El Paso. Sun World is a subsidiary of NationsBank Texas Bancorporation, Inc., which is in turn a subsidiary of NationsBank Corporation, a multistate bank holding company headquartered in Charlotte, North Carolina.

Notice of the Applications was published in a general circulation newspaper in El Paso on May 8, 1996. In addition, Sun World sent copies of the Applications to the banking commissioners of Texas and New Mexico. On May 20, 1996, and on June 10, 1996, the Texas Bank Commissioner ("Texas Bank Commissioner" or "the Commissioner") wrote the OCC to oppose the Applications, objecting especially to Sun World's retention of its existing branches in Texas when it relocates its main office to New Mexico. On June 4, 1996, the New Mexico Director of the Financial Institutions Division ("New Mexico Bank Commissioner") also wrote the OCC to oppose the Applications, making essentially the same points as the Texas Commissioner. On June 4, 1996, the Independent Bankers Association of Texas ("IBAT") also wrote the OCC to oppose the Applications. Sun World responded to the above objections in letters dated June 6, June 11, and June 20, 1996. The objections are addressed in the relevant portions of the discussion below, especially at pages 22-34, 36-37, and 38-41.

Recently, the Texas Bank Commissioner brought suit against Sun World in the Western District of Texas to litigate the banking operations Sun World proposes in its Applications, even before the Applications had been acted on by the OCC. *See Ghiglieri v. Sun World, N.A.*, EP-96-CA-324 (W.D. Tex., Complaint filed July 18, 1996). With the issuance of our Decision today approving Sun World's Applications, the OCC will move to intervene in this case.

The Texas Bank Commissioner's objections to these Applications are similar to her objections to an earlier interstate main office relocation from Arkansas into Texas that is the subject of a lawsuit. In that case, the district court concluded that the OCC's interpretation of 12 U.S.C. 30 & 36 as permitting a national bank to keep its existing branches when it relocates its main office across state lines was erroneous. *See Ghiglieri v. Ludwig*, No. 3:95-CV-2001-H, 1996 U.S. Dist. LEXIS 8321 (N.D. Tex., May 22, 1996), *appeal docketed*, No. 96-10818 (5th Cir. July 10, 1996) ("*Ghiglieri*"). <NOTE: The *Ghiglieri* court was reviewing the OCC's Decision on the Applications of Commercial National Bank of Texarkana (OCC Corporate Decision No. 95-11, March 8, 1995) ("*OCC Commercial National Bank Decision*").> The OCC believes the district court opinion in *Ghiglieri* is incorrect as a matter of law for several reasons. Most significantly, the court did not follow the language of the statutes in effect at the time of the OCC's decision and ignored highly relevant recent legislative history which illuminates the literal language of sections 30 and 36. In addition, the court failed to follow the standards set by the United States Supreme Court for judicial review of an agency's construction of the statutes it administers. *See NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. ___ (1995); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). These standards were recently, emphatically, re-affirmed by the High Court in a decision handed down subsequent to the district court's opinion. *See Smiley v. Citibank (South Dakota), N.A.*, No. 95-860, 517 U.S. ___, 135 L.Ed.2d 25 (June 3, 1996). The district court opinion is discussed at pages 12, 21, 22-34, 36-37, and 39.

The judgment entered in *Ghiglieri* does not limit the OCC's ability to act on Sun World's Applications, however. The judgment enjoins the OCC only from approving other applications like the one at issue in that case -- *i.e.*, to relocate a national bank's main office *from Arkansas into Texas*, where the bank would continue, after the relocation, to maintain interstate branches in Arkansas. In the proceedings in the *Ghiglieri* case, the Texas Bank Commissioner twice tried, but failed, to obtain an order that would have covered other interstate relocations involving Texas, such as Sun World's.

First, the Commissioner offered a proposed judgment that would have enjoined the OCC from approving any further bank application to relocate its main office while continuing to maintain interstate branches in violation of Texas law. *See* Commissioner's Proposed Order (May 31, 1996). The OCC offered a narrower proposed order, limiting the order to the fact pattern before the court (*i.e.*, branch retention following a main office relocation from Arkansas *into Texas*). *See* OCC's Proposed Order and Memorandum in Support (June 7, 1996). The court adopted the OCC's narrower order. *See* Judgment (June 10, 1996).

Second, after the narrower order was entered, the Commissioner tried to amend the judgment to enjoin the OCC from approving any further application to relocate a national bank's main office into or from Texas where the bank would maintain interstate branches, where the maintenance of the branches is based on branch retention under section 30. *See* Commissioner's Motion to Amend Judgment (June 17, 1996). In her motion to amend, the Commissioner *specifically referred to the pending application* by Sun World to relocate from Texas to New Mexico. Nevertheless, the court denied the Commissioner's motion to amend and left the original narrower order in place. *See* Order Denying Plaintiff's Motion to Amend Judgment (June 26, 1996). Thus, the *Ghiglieri* court had the opportunity to include the Sun World Applications within the scope of its Judgment, but did not.

The provisions of the Riegle-Neal Act <NOTE: Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (codified in scattered sections of 12 U.S.C.) (the "Riegle-Neal Act").> governing interstate main office relocations and branch retention create a highly unusual interplay between potential OCC action on applications before us and the status of pending litigation. As discussed below at pages 17-19 and 28-29, the Riegle-Neal provisions apply a different, and narrower, standard for permissible branch retention in interstate main office relocations that occur after May 31, 1997, than for those that occur until then. If a national bank, such as Sun World, relocates its main office from one state to another after May 31, 1997, its power to retain its existing branches in the first state will be determined by the more limited standard governing relocations after that date. In other words, a relocation with branch retention that could be permissible under today's standards might become impermissible under the post-May 31, 1997, standards. <NOTE: At the present time, Sun World's is the only pending interstate main office application involving Texas. A small Oklahoma bank had applied before Sun World, but it recently withdrew its application. However, there may be other banks that might consider such applications but are deterred by the legal uncertainty and potential

risk of litigation. Thus, it is desirable to have the issue resolved in a timely fashion before May 31, 1997.> It is the scope of the current standard that is at issue in the *Ghiglieri* case.

At the present time, however, it is impossible to say whether the scope of the current standard will be resolved by the courts before the standard expires on May 31, 1997. The OCC is appealing the decision in *Ghiglieri* to the United States Court of Appeals for the Fifth Circuit. *See* Notice of Appeal (July 10, 1996). Moreover, because of the short time remaining until May 31, 1997, and the need to have the law settled before then, the OCC will move for an expedited appeal. However, at this time it is uncertain when the appeal will be heard and decided, and when any subsequent review of that decision would conclude. In particular, it is not certain that the issue will be resolved before June 1, 1997. If the OCC declined to act on Sun World's applications until these issues were finally determined on appeal, the time might extend past May 31, 1997. Then, even if the OCC prevailed, Sun World's ability to take action determined to be validly authorized under pre-May 31, 1997, law would be foreclosed. These unique circumstances make it necessary for the OCC to act, so that Sun World is not deprived of a right it, and the OCC, believes it has under current federal law and so that the issues in dispute are able to be fairly presented for judicial resolution. The validity of the OCC's statutory construction and Sun World's claim that it can relocate to Santa Teresa and retain the two existing branches in El Paso may then be determined in the courts.

II. LEGAL AUTHORITY

These Applications involve a series of two transactions:

- (1) The relocation of a national bank's main office from El Paso, Texas, to Santa Teresa, New Mexico, and the bank's retention of its two existing branches in El Paso, under 12 U.S.C. 30.
- (2) The relocated bank's establishment of a new branch at the former site of its main office in El Paso, under 12 U.S.C. 36(c).

These transactions present but one central legal issue: the power of a national bank to retain its existing branches when it moves its main office. The interstate relocation of the main office in itself is well-established, as set out at pages 7-12. If the branch retention in the relocation is authorized, then Sun World can become an interstate national bank (*i.e.*, a bank with branches in another state). Then, in the second transaction, the statutes governing the establishment of new branches by national banks are simply applied to the interstate bank. But, without the branch retention in the relocation transaction, there is no basis to proceed to the second transaction.

Thus, the central legal issue is a national bank's power to retain its existing branches in an interstate relocation of its main office. In 1994, Congress expressly addressed this very issue and confirmed the OCC's prior interpretation of the statutes. In two decisions in early 1994, the OCC determined that the bank could continue to operate its existing branches in its original state when it relocated its main office to another state under section 30, without regard to section 36 or state law. <NOTE: *See* Decision on the Applications of American Security Bank, N.A., Washington, D.C., and Maryland National Bank, Baltimore, Maryland (OCC Corporate Decision No. 94-05, February 4, 1994), *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,695 ("*OCC NationsBank/Maryland National Decision*"); Decision on the Applications of First Fidelity Bank, N.A., Pennsylvania, Philadelphia, Pennsylvania, and First Fidelity Bank, N.A., New Jersey, Newark, New Jersey (OCC Corporate Decision No. 94-04, January 10, 1994), *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,644 ("*OCC First Fidelity/New Jersey Decision*"). There were also other decisions before the Riegle-Neal Act that involved only the interstate relocation of a bank's main office (*i.e.*, the bank did not have branches to retain). *See* Decision on the Applications of the First National Bank of Polk County (OCC Corporate Decision No. 94-21, April 28, 1994) (relocation from Tennessee into Georgia); Decision on the Application of the First National Bank of Spokane (1991) (relocation from Washington into Idaho); Decision on the Application of SouthTrust National Bank (1989) (relocation from Alabama into Georgia); Decision on the Application of the Bank of New Jersey, N.A. (1986) (relocation from New Jersey into Pennsylvania) ("*OCC Bank of New Jersey Decision*"); Decision on the Application of Mark Twain Bank, N.A. (1985) (relocation from Missouri into Kansas) ("*OCC Mark Twain Decision*").> We based this statutory conclusion on consideration of many factors, including an

extensive review of the statutes, legislative history, caselaw, the development of the statutes, and the impact of branch retention *vel non* on the exercise of the primary statutory right to move the main office. We found nothing that required existing branches to be divested in a main office relocation, and concluded a congressional intent to require such divestiture could not be inferred from silence. The OCC's statutory construction of section 30 before the Riegle-Neal Act is summarized at pages 14-16.

In the Riegle-Neal Act, Congress visited section 30 after the earlier OCC decisions and added new language to 12 U.S.C. 30 & 36 to clarify and govern the power of national banks to have interstate branches through retaining existing branches in an interstate main office relocation. This action recognized that, under section 30, national banks had such power before, and then limited it, beginning on June 1, 1997, to co-ordinate the section 30 power with the new Riegle-Neal framework for interstate branches. Section 30, as so amended, is the statute that applies to transactions today. Before the Riegle-Neal Act, nothing in sections 30 or 36 required the constructive divestiture of existing lawful branches in a main office relocation. In the Riegle-Neal Act, Congress added such a requirement, but only for certain interstate relocations and only to begin on June 1, 1997. Congressional action on section 30 in the context of the prior OCC interpretation is especially compelling. Thus, in the relocation of its main office from one state to another, the power of a national bank to retain its existing branches under section 30 is now clearly established. Section 30 and the Riegle-Neal Act are discussed at pages 17-34.

Once Sun World is an interstate national bank with two branches in El Paso, the establishment of the new branch in El Paso at the former site of the main office is evaluated under the statutes, cases, and prior OCC decisions for such transactions by an interstate bank. Before the Riegle-Neal Act, there had been a number of decisions applying the applicable federal branching and merger statutes to transactions by interstate national banks. <NOTE: The *OCC First Fidelity/New Jersey Decision* and the *OCC NationsBank/Maryland National Decision* had involved such transactions after the relocation, and there were also several other applications that did not involve a relocation but did involve interstate merger and branching transactions. See *Decision on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, N.A., Jamesburg, New Jersey, with the Title of Mellon Bank (East) N.A. (March 27, 1984), reprinted in [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) 99,925 ("OCC Mellon Decision")* (in 1984 Heritage had a grandfathered branch in Philadelphia; the 1984 transaction was not consummated and Heritage later became part of Midlantic National Bank); *Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association, State Savings Bank, N.A., and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991), available in 1991 OCC Ltr. LEXIS 73 ("OCC Shawmut Decision")* (both banks owned by Shawmut National Corporation; at the time of conversion State Savings Bank had branches in Rhode Island); *Decision on the Application for the Merger of First Peoples National Bank, Kingston, Pennsylvania, with and into First Fidelity Bank, N.A., Salem, New Jersey (OCC Corporate Decision No. 94-07, February 23, 1994) ("OCC First Peoples Decision")*; *Decision on the Applications to Merge NationsBank of D.C., N.A., Maryland National Bank, and NationsBank of Maryland, N.A. (OCC Corporate Decision No. 94-22, April 29, 1994) ("OCC NationsBank/D.C.-Maryland Decision")*; *Decision on the Application for the Merger of Continental Bank, Norristown, Pennsylvania, into Midlantic National Bank, Newark, New Jersey (OCC Corporate Decision No. 94-37, August 12, 1994) ("OCC Midlantic Decision")*.> In the pre-Riegle-Neal decisions, the OCC determined that, when the federal statutes refer to state law, they were intended to apply state laws on a state-by-state basis for transactions *in* each state by an interstate national bank. That is, an interstate bank could establish new branches *within* each state under section 36(c), depending upon that state's law for in-state branching for its own state-chartered banks. In the Riegle-Neal Act, Congress left these statutes unchanged after this OCC interpretation and, in the new Riegle-Neal interstate provisions, adopted a similar state-by-state framework for subsequent transactions by a Riegle-Neal interstate bank. Sun World's establishment of the new branch in El Paso is discussed at pages 34-37.

Since passage of the Riegle-Neal Act, the OCC has applied these statutes in the foregoing manner in many applications, including decisions in October 1994 shortly after the enactment of the Riegle-Neal Act. In particular, in one decision, a state bank commissioner objected to the transaction, arguing that the maintenance of interstate branches in the state would

violate a state law and also raising interpretive questions under the Riegle-Neal Act. <NOTE: See Decision of the Office of the Comptroller of the Currency on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), *reprinted in Fed. Banking L. Rep. (CCH) 90,474 ("OCC Bank Midwest Decision")*. Other decisions after the Riegle-Neal Act include: Decision on the Applications of National Westminster Bank USA and National Westminster Bank NJ (OCC Corporate Decision No. 94-43, October 20, 1994) ("*OCC NatWest Decision*"); Decision on the Applications of First Fidelity Bank, N.A., and The Bank of Baltimore (OCC Corporate Decision No. 94-47, November 4, 1994) ("*OCC First Fidelity/Baltimore Decision*"); Decision on the Application to Merge Chase Savings Bank into The Chase Manhattan Bank, N.A. (OCC Corporate Decision No. 95-08, February 10, 1995) ("*OCC Chase Decision*"); Decision on the Applications of American National Bank and Trust Company of Wisconsin and American National Bank and Trust Company of Chicago (OCC Corporate Decision No. 95-12, March 8, 1995); Decision on the Applications of PNC Bank, Northern Kentucky, N.A. and PNC Bank, Ohio, N.A. (OCC Corporate Decision No. 95-13, March 14, 1995) ("*OCC PNC/Kentucky Decision*"); Decision on the Applications of Firststar Bank Quad Cities, N.A., and Firststar Bank Davenport, N.A. (OCC Corporate Decision No. 95-16, April 27, 1995); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995) ("*OCC Midlantic/Old York Decision*"); Decision on the Applications of BayBank Connecticut, N.A. and BayBank Boston, N.A. (OCC Corporate Decision No. 95-34, July 26, 1995) ("*OCC BayBanks/Connecticut Decision*"); Decision on the Applications of PNC Bank, New Jersey, N.A. and PNC Bank, N.A. (OCC Corporate Decision No. 95-36, August 7, 1995); Decision on the Applications of Fleet National Bank, Providence, Rhode Island, et al. (OCC Corporate Decision No. 96-17, March 27, 1996) ("*OCC Fleet Decision*").> In that decision, because of the issues raised by the objection, we revisited our analysis of pre-Riegle-Neal law and thoroughly considered the impact of the Riegle-Neal Act on existing authority and the applicability of state law.

Therefore, these Applications by Sun World are similar to a number of prior interstate relocation and branching applications approved by the OCC. Indeed, the objections raised to these Applications by the Texas and New Mexico Bank Commissioners are similar to those raised by the Kansas Bank Commissioner in the *OCC Bank Midwest Decision*. The legal analysis and authorities set forth in the prior decisions, especially the *OCC Bank Midwest Decision*, the *OCC NationsBank/Maryland National Decision*, and the *OCC First Fidelity/New Jersey Decision*, also apply here.

A. Sun World may Relocate its Main Office to Santa Teresa, New Mexico, and Continue to Operate its Existing Branches in El Paso, Texas, under 12 U.S.C. 30.

In the Relocation Application, Sun World applied to change the location of its main office from El Paso, Texas, to Santa Teresa, New Mexico, a distance of approximately one-half mile. Sun World will keep and continue to operate its two existing branches in El Paso, Texas. Thus, after the relocation, Sun World will be an interstate national bank operating in two states, with its main office in New Mexico and branches in Texas.

1. The Interstate Relocation of Sun World's Main Office to Santa Teresa is Authorized.

The relocation of Sun World's main office is legally authorized under 12 U.S.C. 30. Section 30 authorizes a national bank to change the location of its main office to any location within 30 miles of the limits of the city in which its main office is located. 12 U.S.C. 30(b). Such a relocation, even across state lines, is authorized by the literal language of the statute, and nothing in the legislative history gives any reason not to adhere to the literal language. Section 30 operates independently of section 36, and the authority to relocate a main office is not limited by the McFadden Act. Thus, a main office relocation can result in a national bank having an office at a location where it would not be authorized to establish a branch. Finally, section 30 preempts state laws that conflict with the authority it confers on national banks.

The authority of a national bank to relocate its main office is set out in 12 U.S.C. 30(b), which provides:

Any national banking association, upon written notice to the Comptroller of the Currency, may change the location of its main office to any authorized branch location within the limits of the city, town, or village in which it is

situated, or, with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, *to any other location within or outside the limits of the city, town, or village in which it is located, but not more than thirty miles beyond such limits.*

12 U.S.C. 30(b) (emphasis added).

Statutory interpretation begins with the language of the statute itself, which must be interpreted in accordance with its plain meaning. *See Lewis v. United States*, 445 U.S. 55, 60 (1980). "Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). A fundamental canon of statutory construction is that, when a statute's language is clear and unambiguous, the plain meaning of the statute must be applied. *See, e.g., Caminetti v. United States*, 242 U.S. 470, 485 (1917); *Higgins v. Marshall*, 584 F.2d 1035, 1037 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 931 (1979). *See generally* 2A *Sutherland Statutes and Statutory Construction* 46.01 (5th ed. 1992). The OCC, as the agency charged with administering the statute, is bound no less than courts by this canon of construction. "If the statute is clear and unambiguous, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Board of Governors of the Federal Reserve System v. Dimension Financial Corp.*, 474 U.S. 361, 368 (1986) (quoting *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)). Moreover, the legislative history of section 30 provides no basis for departing from the plain meaning of the statute. *See OCC Bank Midwest Decision* (Part II-A-1-b) (review of legislative history of section 30 from enactment in 1886 through 1959 amendment that removed language limiting relocations to places within the same state to 1982 amendment that was the last change prior to the Riegle-Neal Act).