



**Comptroller of the Currency
Administrator of National Banks**

Washington, D.C. 20219

**Corporate Decision #97-01
January 1997**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS OF
THE ANDERSON NATIONAL BANK OF LAWRENCEBURG
LAWRENCEBURG, KENTUCKY**

November 4, 1996

I. INTRODUCTION

On September 4, 1996, The Anderson National Bank of Lawrenceburg, Lawrenceburg, Kentucky (“Bank”) filed an application with the Office of the Comptroller of the Currency (“OCC”) for approval to change the location of its main office from Lawrenceburg, Anderson County, Kentucky to Lexington, Fayette County, Kentucky, under 12 U.S.C. § 30 (the “Relocation Application”). The proposed location in Lexington is approximately 22.7 miles from the city limits of Lawrenceburg. During and after the relocation of its main office, the Bank will retain its existing branch in Lawrenceburg, Kentucky.

On September 4, 1996, the Bank also applied to the OCC for approval to establish a new branch office at the site of its former main office in Lawrenceburg, Kentucky, following the relocation of its main office (the “Branch Application”). The new branch in Lawrenceburg will open immediately after the main office is moved to Lexington, so there will be no interruption of banking services for the Bank’s customers in Lawrenceburg.

Currently, the Bank is a Kentucky national bank with its main office and one branch in Lawrenceburg, Kentucky. At the conclusion of the proposed transactions, the Bank will have its main office in Lexington, Fayette County and two branches in Lawrenceburg, Anderson County. Bank management has decided on this restructuring in order to take advantage of market opportunities in the Lexington area and to provide added customer convenience.

On September 4, 1996, the Bank published notice of the Relocation Application and the Branch Application in the Lexington, Fayette County, Kentucky and Lawrenceburg, Anderson County, Kentucky newspapers. The OCC has not received any protests or

comments to the Bank's proposed relocation or branch application. Pursuant to recent Kentucky statutory changes, the Kentucky Department of Financial Institutions has recently approved at least one very similar transaction for a state-chartered bank.

II. Legal Authority

A. The Bank May Relocate its Main Office to Lexington, Fayette County, Kentucky, and Continue to Operate its Existing Branch in Lawrenceburg, Anderson County, Kentucky, pursuant to 12 U.S.C. § 30.

In the Relocation Application, the Bank applied to change the location of its main office from Lawrenceburg, Kentucky, to Lexington, Kentucky, a distance of less than 30 miles from the city limits of Lawrenceburg. The Bank plans to keep and continue to operate its one existing branch in Anderson County, Kentucky. Thus, after the relocation, the Bank will have a main office in a different county than its branch.

This Relocation Application thus involves the issues of the meaning of section 30 and its relationship to section 36. The OCC has considered those issues in the context of both intrastate and interstate main office relocations in a number of prior applications, including several recent intrastate applications from Kentucky.¹ In the recent Kentucky applications, the banks relocated their main offices to an adjoining county while retaining existing branches in the original county.

¹ In 1995, the OCC approved a proposal to relocate a main office and retain existing branches under section 30, where the existing branches could not be re-established anew under the McFadden Act by a national bank with its main office at the new location. See Decision of the Office of the Comptroller of the Currency on the Applications of The Farmers Bank, Butler, Kentucky (August 10, 1995) ("OCC Farmers Decision"). Under Kentucky law at that time, banks could have branches only within the county of their main office, except that branches in another county could be acquired by merger with another bank. In these applications, upon conversion, the bank proposed to relocate its main office to the adjoining county while retaining existing branches in its original county. In these applications, the bank did not retain the former main office as a branch. The Kentucky Bankers Association originally objected to the applications on grounds that the applications violated Kentucky statutory restrictions on branching across county lines, but later the objections were withdrawn. See also, Decision of the Office of the Comptroller of the Currency on the Application of First Southern National Bank of Jessamine County, Nicholasville, Kentucky, to relocate its main office to Richmond, Madison County, Kentucky (January 18, 1996) ("OCC First Southern-Jessamine Decision"); Decision of the Office of the Comptroller of the Currency on the Application of First Southern National Bank of Lincoln County, Hustonville, Kentucky, to relocate its main office to Somerset, Pulaski County, Kentucky (March 1, 1996) ("OCC First Southern-Lincoln Decision"). Earlier, in a 1982 interpretive letter, OCC staff had taken the same position that existing branches were retained under section 30 and were not to be reevaluated under section 36. See OCC Letter from Peter Liebesman, Assistant Director, to Martha R. Seger, Commissioner, Michigan Financial Institutions Bureau (May 22, 1981) ("1981 OCC Letter"). However, recently the Kentucky statutes have been amended to authorize state banks to branch in any county where a bank has its principal office or an existing branch. See Ky. Rev. Stat. § 287.180(2) and discussion, infra, in section II-B.

In previous decisions, including the OCC Farmers Decision, the OCC determined that section 30 operates independently of section 36: a national bank may move its main office under section 30 to a location at which it could not establish a branch under section 36(c); and the relocating national bank may continue to operate its existing branches even when those locations could not be established as new branches under section 36(c) from the bank's new main office location. This analysis also has been considered in the context of interstate main office relocations.² Congressional action in the Riegle-Neal Act confirmed that interpretation of sections 30 and 36, while changing certain aspects of the power to retain branches in the state of the former main office in an interstate relocation. Congress did not change the statutes with respect to other circumstances. Thus, the Relocation Application does not raise new legal issues. The legal analysis and authorities are set forth in the prior decisions, and only a summary will be presented here. The earlier decisions should be consulted for the full analysis. Further, the Kentucky statutes have been amended to authorize the subject transaction for Kentucky state-chartered banks. Accordingly, the Relocation Application is legally authorized.

² See Decision of the Comptroller of the Currency on the Applications of Keybank, National Association, Angola, Indiana, and Society National Bank, Cleveland, Ohio (OCC Corporate Decision No. 96-32, June 14, 1996); and 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); Decision on the Applications of First Fidelity Bank, N.A., and The Bank of Baltimore (OCC Corporate Decision No. 94-47, November 4, 1994); 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); 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); 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); Decision on the Applications of Star Bank, N.A., Eastern Indiana and Star Bank, N.A. (OCC Corporate Decision No. 95-33, July 25, 1995); Decision on the Applications of BayBank Connecticut, N.A. and BayBank Boston, N.A. (OCC Corporate Decision No. 95-34, July 26, 1995); 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).

1. Twelve U.S.C. § 30 Authorizes the Relocation of the Bank's Main Office.

The relocation of the Bank's main office from Lawrenceburg, Anderson County to Lexington, Fayette County 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.³ 12 U.S.C. § 30(b). The Bank's proposed main office location in Lexington is less than 23 miles from the city limits of Lawrenceburg. Such a relocation, even across county or 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.⁴ See OCC Bank Midwest Decision (Part II-A-1-b). Section 30 operates independently of 12 U.S.C. § 36, and thus the authority to relocate a main office is not limited by the McFadden Act, Section 36. See, e.g., Ramapo Bank v. Camp, 425 F.2d 333, 340-46 (3d Cir. 1970), cert. denied, 400 U.S. 828 (1970) (“Ramapo Bank”); State of Idaho Dep. of Fin. v. Clarke, 994 F.2d 1441, 1444 (9th Cir. 1993); Traverse City State Bank v. Empire Nat'l Bank, 228 F.Supp. 984, 992 (W.D. Mich. 1964) (“Traverse City State Bank”) (Section 30 independent of McFadden Act and state law). The Bank Holding Company Act also does not apply to main office relocations. Synovus Fin. Corp. v. Bd. of Governors of the Fed. Reserve Sys., 952 F.2d 426, 434-36 (D.C. Cir. 1991); McEnteer v. Clarke, 644 F.Supp. 290, 292-94 (E.D. Pa. 1986) (“McEnteer”). See also, Federal Reserve Board, Rescission of Policy Statement Requiring Application for Relocation of a Subsidiary Bank to Another State, 57 Fed. Reg. 9973 (March 23, 1992) (rescinding former 12 C.F.R. § 225.144). Section 30 preempts state laws that conflict with the authority it confers on national banks. See, e.g., Ramapo Bank, 425 F.2d at 345; McEnteer, 644 F.Supp. 290; Traverse City State Bank, 228 F.Supp. at 992. Thus, the literal language of Section 30 must be given full effect. National banks are authorized to move their main office to any location within thirty miles, even across

³ 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).

⁴ We note that since June 24, 1996, Kentucky state-chartered banks have been permitted to relocate their principal offices to a location in another county which is within thirty miles of the city, town, village in which the principal office was originally located. See Parity Letter 96-1; Principal Office Relocations, Larry D. Lander, the Commissioner of the Department of Financial Institutions in Kentucky (June 24, 1996) (“Parity Letter”). Therefore, the proposed relocation by the Bank would also be authorized for state-chartered banks.

state lines. See OCC Bank Midwest Decision (Part II-A-1). By the same reasoning, national banks are also authorized to move their main office to any location within 30 miles within the same state, including across county lines. See OCC First Southern-Lincoln Decision (Part II-A-1); OCC First Southern-Jessamine Decision (Part II-A-1); OCC Farmers Decision (Part II-C).

Further, the proposed location in Lexington will meet the criteria to be a main office under Section 30. Section 30 does not define the term "main office." The term also is not defined elsewhere in the National Bank Act. Nor does the National Bank Act impose any specific requirements or criteria for a national bank's main office. However, examination of the original version of Section 30, related statutes, and the historical introduction of the term "main office" reveals its intended meaning. A bank's main office is the office designated as such in its articles of association, *i.e.*, the office that is the registered location of the corporation as distinct from its branches -- provided only that it conducts a banking business at such office. There is no requirement in statute or case law that the bank conduct the principal portion, or any required minimum portion, of the bank's business at the "main office" rather than at one of its "branches." See Bank of Western Oklahoma v. First National Bank of Sayre, No. CIV-95-1930-A (W.D. Okla. July 29, 1996). Indeed, the volume and nature of business conducted at the location is not an appropriate determinant of a valid main office because those factors can be affected by external events that have no connection to the original designation. For example, changing demographics in the market area and changes in local business patterns may cause business at one site (the main office) to shrink, while business at other sites (branches) to increase. This interpretation of "main office" in Section 30 is confirmed in judicial decisions, prior OCC practice and, by analogy, general corporate law. This issue is set out more fully in previous OCC decisions. See decisions cited in note 2.

Accordingly, national banks are authorized to move a main office to any location within 30 miles of its present site, even across county lines. The Bank's proposed main office location in Lexington is approximately 23 miles from the city limits of its present site in Lawrenceburg, Anderson County, Kentucky. Accordingly, Section 30 authorizes the relocation of the Bank's main office.

2. The Bank's Continued Operation of its Existing Branch in Lawrenceburg, Anderson County, Kentucky is Authorized under Section 30. Congress Re-affirmed this Authority for National Banks in the Statutory Language and Legislative History of the Riegle-Neal Act.

When it relocates its main office to Lexington, Fayette County, Kentucky, the Bank will continue to operate its existing branch in Lawrenceburg, Anderson County, Kentucky. As was discussed in the OCC Farmers Decision, when a national bank relocates its main office under section 30, it may continue to operate its existing branches as an implied, but necessary, adjunct to the express authority to move the main office. The statutory language of sections 30 and 36 does not expressly address this area. The OCC concluded that this was

Congress' intent by examining the overall statutory framework and its historical development. Congress enacted section 30, allowing the main office to relocate, without requiring the divestiture, re-examination, or re-authorization of existing branches. Congress subsequently amended sections 30 and 36 numerous times without indicating any intent to subject the existing branches of a relocating bank to section 36. See also decisions cited in note 2.

Accordingly, when it relocates its main office from Lawrenceburg to Lexington, the Bank is legally authorized to continue to operate its existing branch in Lawrenceburg.

B. Pursuant to 12 U.S.C. § 36(c), the Bank May Establish a New Branch at the Site of its Former Main Office in Lawrenceburg, Anderson County, Kentucky.

After its main office relocation, the Bank will have its main office in Lexington, Fayette County, Kentucky, and an existing branch in Lawrenceburg, Anderson County, Kentucky. The Bank also has applied to establish a new branch at the site of its former main office in Lawrenceburg, Anderson County, Kentucky, under 12 U.S.C. § 36(c). The Branch Application is a separate transaction from the main office relocation and retention of the existing branch. In order to have an additional branch in Lawrenceburg, the Bank must apply to open a new branch there. Thus, this Branch Application is an application by a national bank for an additional branch in a county where it already has a branch. The OCC has not previously approved the establishment of a branch at the site of a relocated national bank's former main office in the context of an intercounty relocation in Kentucky. However, both the OCC and the courts have considered this question in the past, and thus the Branch Application raises no new issues. Rather, this opinion addresses the application of established precedent for applying Section 36(c) to national banks.

The McFadden Act authorizes a national bank to establish new branches "at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question . . ." 12 U.S.C. § 36(c)(2). Effective July 15, 1996, Kentucky amended its branching statute and now expressly permits state chartered banks in Kentucky to branch "within any county in which its principal office or an existing branch is located... ." Ky. Rev. Stat. § 287.180(2). As a matter of federal law, after the main office relocation to another county within Kentucky, the Bank can establish additional branches in Kentucky to the same extent that Kentucky law permits state-chartered banks to establish branches in Kentucky. The recently revised Kentucky Code allows a Kentucky-chartered bank to establish and operate branch offices within any county in which its principal office or an existing branch is located. The Bank, upon relocating its main office from Anderson County to Fayette County, will have an existing branch remaining in Anderson County. The Bank is proposing to establish a new branch at the location of its former main office in a county where it will have an existing branch. Therefore, the Bank may establish a new branch at the location of its former main office under Section 36(c).

Further, as noted earlier, the Commissioner of the Department of Financial Institutions in Kentucky issued a Parity Letter, effective as of June 24, 1996, that interprets the newly revised Kentucky statute and states, in part:

Now, after a state-chartered bank has relocated its principal office, state law clearly delineates the bank's branching rights in all counties where it is located. When a bank relocates to another county, assuming it has at least one branch in addition to its principal office, it may apply for permission to establish other branches in the original county. It may apply for a branch location at the location of the original principal office location, which must have been closed. It may also apply for a branch simultaneously with the closure of the principal office required.

Parity Letter, at 2. The Parity Letter sets forth that if a bank, after a relocation of a principal office into another county, has at least one existing branch office remaining in the original county, it may apply for additional branches. If on the other hand, the bank only has a principal office and no other branches, the bank "would forfeit all branching rights in the original county if it relocated its principal office to a new county."⁵ Id. Since the enactment of the revisions to the Kentucky statute and the issuance of the Parity Letter, the Department of Financial Institutions has approved at least one transaction involving a main office relocation and the subsequent establishment of a branch office in a former main office location. See, e.g., "In Re: Application of the Kentucky Bank & Trust to relocate its main office at 900 Diederich Boulevard, Russell, Greenup County, Kentucky, to 1900 Block of Winchester Avenue, Ashland, Boyd County, Kentucky, and to establish a branch at the existing main office" (Order issued on September 4, 1996). Therefore, pursuant to the recent statutory changes in Kentucky, it is clear that a state-chartered bank can establish a branch in a county where it has an existing main office or branch. Further, Kentucky state-chartered banks are authorized to relocate their main office to another county and to establish a branch at the former main office site, provided that there is at least one remaining branch in the original county.

Accordingly, the Bank may establish a new branch at the site of its former main office in Lawrenceburg under Section 36(c).

⁵ We note that the Parity Letter also places restrictions on state banks as to the frequency that a state-chartered bank may avail itself of the statute. The Parity Letter states: "[A] bank which has relocated its principal office to another county must wait at least five years before it may apply to again relocate its principal office to another county." Parity Letter, at 3. Since this is the first time the Bank is relocating a main office across county lines, this memorandum will not address the applicability of the time restriction imposed on state banks.

C. Conclusion

Our legal analysis of these Applications follows our analysis of prior intrastate and interstate main office relocation decisions. Pursuant to 12 U.S.C. § 30, the Bank may relocate its main office from Lawrenceburg, Anderson County, to Lexington, Fayette County, Kentucky, and continue to operate its existing branch in Lawrenceburg, Kentucky. This relocation and branch retention is consistent with the legislative history of the current Section 30, the weight of case law interpreting Section 30, and previous OCC decisions. Finally, pursuant to 12 U.S.C. § 36(c), after relocating its main office to Lexington, Fayette County, Kentucky, the Bank may legally establish a new branch at the site of its former main office in Lawrenceburg, Anderson County, Kentucky.

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. The Bank currently has a Satisfactory rating with respect to CRA performance. No public comments were received by the OCC relating to these Applications that would cause the OCC to question the Bank's performance in complying with the CRA.

The relocation and operation of the branches should have no adverse effect on the Bank's CRA performance. The CRA community delineation of the relocated Bank will be expanded to include all of Fayette County as well as Anderson County. No low or moderate income communities have been excluded by this delineation. The relocation does not alter the Bank's obligation to help meet the credit needs of its community.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, the Relocation Application and the Branch Application are legally authorized under 12 U.S.C. §§ 30 and 36. The transactions also meet the criteria for approval under other statutory factors. Accordingly, these Applications are hereby approved.

/s/
Julie L. Williams
Chief Counsel

11-04-96
Date