



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**Corporate Decision #99-41
December 1999**

**APPLICATION BY FIRST BETHANY BANK & TRUST COMPANY,
OKLAHOMA CITY, OKLAHOMA,
TO ESTABLISH A MOBILE BRANCH
TO SERVE SIX LOCATIONS IN OKLAHOMA**

November 19, 1999

I. Introduction

First Bethany Bank & Trust Company, National Association, Oklahoma City, Oklahoma, has submitted an application to establish a mobile branch to provide branching services at six identified sites. Three of the sites are in Oklahoma City, Oklahoma: 2800 SW 27th Street, 4050 W. I-40, and 3345 S. Ann Arbor. Two of the sites are in Bethany, Oklahoma: 6729 NW 39th Expressway, and 7600 NW 23rd Street. One is in Warr Acres, Oklahoma, at 7300 Comanche Avenue.

The bank proposes that the mobile branch will stop at these sites on a regular basis and provide services to persons who visit the facility just as they would a more traditional brick and mortar branch.¹

The application was published for comment and the OCC received no protests or comments.

¹ The OCC has defined a mobile branch as:

[A] branch . . . that does not have a single, permanent site, and includes a vehicle that travels to various public locations to enable customers to conduct their banking business. A mobile branch may provide services at various regularly scheduled locations or it may be open at irregular times and locations such as at county fairs, sporting events, or school registration periods. A branch license is needed for each mobile unit.

II. Analysis

A. The proposed facility is a branch under 12 U.S.C. 36

The first step in considering this application is to determine whether the facility that the bank proposes to establish and operate would constitute a branch. As the Supreme Court has held, federal law alone determines this question.²

Federal law defines “branch” as including “any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.”³ Construing this statutory definition, the Supreme Court has concluded that a bank-owned armored car service staffed by bank employees that picked up funds for deposit was “receiving deposits” and thus was a branch for purposes of federal law.⁴

The Bank has proposed that the staffed van it will own and operate will accept deposits and perform other branching functions for its customers. Thus, it is clear that the bank’s proposal contemplates the establishment of a branch in Oklahoma within the meaning of section 36 and is subject to the restrictions on branching imposed by section 36.⁵

B. Authority for the establishment of branches by national banks

² *First National Bank of Plant City v. Dickinson*, 396 U.S. 122, 133-34 (1969) (“*Plant City*”).

³ 12 U.S.C. 36(j).

⁴ *Plant City* at 137-138.

⁵ The Bank will own the facility and permit members of the public to have physical access to the facility for purposes of undertaking banking transactions. Consequently, this proposed facility also meets these two requirements for being considered to be a branch. 12 C.F.R. 5.30(d)(1)(i), (ii)(a). While, as will be discussed, the facility would not be used to make loans, the Supreme Court has noted that the undertaking of any one of the three services mentioned in the branch definition (*see supra* note 3) will cause a bank facility to be considered as a branch. *Plant City* at p. 135. Under state law, however, this facility would not be considered to be a branch, but rather a detached facility, because it will not be engaged in the making of loans. Okla. Stat Ann., tit. 6, 415 and tit. 18, 381.24b. (West 1996 & Supp. 1998). Nevertheless, because the facility would be considered to be a branch under federal law, this Decision Statement refers to the proposed facility as a branch.

1. Federal law

Once the determination is made under federal law that a proposed facility will constitute a branch, section 36(c) directs the Comptroller to look to state law to determine whether and where the branch may be established. Under section 36(c):

A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town, or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) 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 by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks

Thus, the Comptroller must evaluate a national bank's branch application in the context of the statutory law of the state in question.⁶ In undertaking this review of state law, the Comptroller is bound by any relevant geographic limits on branching that state law imposes.⁷ In addition, the Court of Appeals for the Second Circuit indicated that national banks may only operate a mobile branching facility if affirmatively authorized by state law for state banks.⁸ In reaching its conclusion that such services were not authorized in Connecticut, where the case arose, and in the absence of specific state statutory guidance on the question, the Court relied on two opinions of the state Attorney General finding that such services were impermissible. The Court then found such branches to be impermissible for national banks, stating that national bank establishment of such branches would create competitive inequality with state banks.⁹ While the OCC has not necessarily taken the view that this case properly interpreted section 36, the current circumstances are significantly different than those confronting the Second Circuit. Consequently, even if that case was correctly decided under its facts, it does not preclude approval of this application.

2. State law

⁶ *E.g. First National Bank of Fairbanks v. Camp*, 465 F.2d 586, 597 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1124 (1973).

⁷ *See First National Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252 (1966).

⁸ *Brown v. Clarke*, 878 F.2d 627 (2d Cir. 1989) ("*Brown*").

⁹ *Id.* at 632.

a. Branching authority of state savings and loan associations

Under 12 U.S.C. 36(c)(2), the OCC may approve the establishment of new intrastate branches by national banks in a state to the extent that state branching law permits “State banks” to branch. As has been determined recently by the OCC, Oklahoma-chartered savings and loan associations, under 12 U.S.C. 36(l), are corporations or institutions “carrying on the banking business under the authority of State laws.” Thus, they are “State banks” for purposes of 12 U.S.C. 36(c)(2). Moreover, the OCC has determined that Oklahoma-chartered savings and loan associations are authorized by Oklahoma branching law to establish intrastate branches statewide.¹⁰ As a result, the OCC has determined that national banks also have authority to

¹⁰ The Oklahoma statute pertaining to branching by state-chartered savings and loan associations states:

Authorization to establish branches. From and after May 3, 1990, and until July 1, 1999, new association branches may be established only under the guidelines set forth in this section. From and after July 1, 1999, new association branches may be established with permission granted by order of the State Banking Commissioner without regard to the restrictions otherwise provided in this subsection.

Okla. Stat. Ann. at tit. 18, 381.24a.B. (West 1999). In contrast, commercial banks in Oklahoma are limited by the state’s commercial bank branching law to the establishment of two de novo branches and three “detached facilities” which are similar to branches except that they cannot make loans. *Id.* at tit. 6, 501.1.A.1., 415.A.1. and B.3. In addition to the numerical limitations, stringent geographical limitations also apply to both types of branches. *Id.* at 415.A.1. and 501.1.A. State commercial banks also may branch through acquisitions of banks, savings associations, or branches if certain requirements are met. *Id.* at 501.1.C.

Until July 1, 1999, parallel limitations applied to state savings associations. *Id.* at tit. 18, sec. 381.24a.B., 381.24a.C., 381.24b (respectively, de novo branching, branching through acquisition, and establishment of “detached facilities”). As of that date, however, the statute imposes no limitations. *Id.* at 381.24a.B. That the provisions pertaining to branching through acquisition and the establishment of detached facilities remain codified is not surprising. The lifting of restrictions on state savings and loan association branching as of July 1, 1999, required no affirmative action by the state legislature and none was taken. The sunset provision already had been included in the statute and took effect without further action by the legislature. *Id.* at 381.24a.B. Because these restrictions lapsed due to legislative inaction, these other provisions of the state savings and loan association law relating to branching remain codified. However, because state savings and loan associations now have the unfettered ability to provide full branching services throughout Oklahoma, the requirements set forth in those sections

establish intrastate branches in Oklahoma statewide.¹¹ Consequently, we conclude that the six proposed sites at which the applicant proposes to provide branching services through use of a mobile branch are sites at which a national bank under section 36, incorporating relevant state savings and loan association branching law, are permissible branch locations.

b. Branching authority of state commercial banks

Moreover, we note that even under the provisions of state commercial bank branching laws, the applicant could establish branches, as defined in section 36(j),¹² at each of the six proposed sites.

State commercial bank branching law permits banks to establish three detached facilities within geographical limits based on the location of the bank's main office.¹³ In addition, the Oklahoma statutes provide that if a bank acquires another bank it retains the same authority to establish detached facilities that the target bank had at the time of acquisition.¹⁴ The applicant has represented that its current branch at 6500 39th NW Expressway, Bethany, was the former main office of a bank that it acquired through a merger in August 1998.¹⁵ We note also that the

appear to have little utility.

¹¹ These determinations and conclusions are consistent with Decision of the Comptroller of the Currency on Applications by Four National Banks in Oklahoma to Establish Branches Based on 12 U.S.C. 36 and the Branching Authority of Savings and Loan Associations Chartered by the State of Oklahoma (Corporate Decision 99-20) (July 28, 1999) and Decision of the Comptroller of the Comptroller of the Currency on Applications by Four National Banks in Oklahoma to Establish Branches Based on 12 U.S.C. 36 and the Branching Authority of Savings And Loan Associations Chartered by the State of Oklahoma (Corporate Decision 99-25) (September 2, 1999). This Decision Statement incorporates and relies on the facts, legal analysis, and the conclusions set forth in those two Decision Statements including the discussion and response to protests filed in connection with the applications addressed in those Decision Statements.

¹² See *supra* note 3 and accompanying text.

¹³ One must be on property owned or leased by the bank within 1,000 feet of the bank's main office; one on property owned or leased within three miles of the bank's main building; and one on property owned or leased within the limits of the municipality where the bank is located. Okla. Stat. Ann., tit. 6, 415.A.1.

¹⁴ *Id.* at 501.1.C.2.

¹⁵ In this transaction, the applicant, which was newly formed, acquired an affiliated bank under provisions of Oklahoma law pertaining to bank holding companies. *Id.* at 502.G.2.

applicant currently operates no detached facilities based on the location of its main office or on the location of the former main office of the target bank acquired in the 1998 merger. Moreover, the target bank operated no detached facilities at the time of that merger. Consequently, we conclude that the applicant retains the detached facility rights of the target bank.

Moreover, the applicant has represented that the six proposed sites comply with all state statutory requirements imposed on the establishment of detached facilities by state commercial banks.¹⁶ Consequently, we conclude that under Oklahoma's branching laws applicable to state commercial banks, the six proposed sites are permissible sites at which the bank may provide branching services.

See Letter by Michael K. Hughes, OCC Licensing Manager (December 17, 1997) (approving application of First Bethany Bank & Trust, National Association, Oklahoma City, Oklahoma, to acquire by merger The First National Bank of Bethany, Bethany, Oklahoma).

¹⁶ The applicant represents that the 2800 SW 27th Street site is within 1,000 feet of the bank's main office site at 2719 SW 29th Street, both located in Oklahoma City; the 450 W. I-40, Oklahoma City, site is within three miles of the main office; and the site at 3345 S. Ann Arbor, Oklahoma City, is within the limits of the same municipality as the main office site.

The applicant also represents that the site at 6729 NW 39th Expressway, Bethany, is within 1,000 feet of the former main office site of the target bank, now a branch of the applicant, at 6500 SW 39th Street, Bethany; the site at 7300 Comanche Avenue, Warr Acres, is within three miles of the former main office; and the site on 600 NW 23rd Street and the former main office are both within the municipal limits of Bethany. With respect to the Comanche Avenue site, we note that while the geographical restrictions applicable to this site require that it be within three miles of the former main office, there is no requirement that it be in the same municipality.

In addition, the applicant represents that the mobile branch will operate at these sites on property, such as a parking lot, that will be leased for this purpose from the property owners in accordance with the state's detached facility statute. *Id.* at 415.A.1. (requiring that detached facilities be located on property "owned or leased by the bank"). The bank also represents that the sites are not within 330 feet of another bank's main office or branch in conformance with statutory requirements relating to detached facilities. *Id.* at 415.A.3. Finally, the applicant represents that the mobile branch will not make loans. This is in accordance with state law prohibiting detached facilities from engaging in this activity. *Id.* at 415.B.3.

Of course, given the authority of state savings and loan associations to branch at these proposed locations without these limitations, the representations made by the applicant with respect to the above matters would not have been required.

c. Mobile branching

In addition to the applicability of state branching law, as discussed above, to national bank branching, the *Brown* case addressed the relevance of state law to mobile branching. *Brown* involved a situation where the bank and a customer arranged for a mobile facility of the bank to come to locations, such as the customer's home or office, to pick up deposits pursuant to a contractual relationship with the customer.¹⁷ As discussed, under the present facts, the staffed van would be located at six specific, identified sites and would serve the public generally at those sites. A staffed van that is operated at particular public sites need not be viewed as a mobile facility of the type addressed in *Brown*. Rather, this application may be viewed, not as involving mobile branching, but as an application to establish six fixed site branches, each of which will be served by a mobile van which routinely travels from site to site.¹⁸

Alternatively, considering the applicant's proposal as fitting within the scope of *Brown*, we note that the Jackson Decision addressed the situation where, as in Oklahoma, nothing in the relevant state branching statutes prohibited the establishment of mobile branches. Under such circumstances, the Comptroller noted:

¹⁷ *Brown* at p. 628.

¹⁸ *E.g.*, Decision of the Comptroller of the Currency on the Application of First National Bank of Jackson, Jackson, Tennessee (April 13, 1990) (the "Jackson Decision"). As the Comptroller noted in the Jackson Decision, involving a staffed van to serve facilities such as nursing homes, "those cases that the *Brown* court did cite . . . discuss the regulation of the 'manner' by which a branch is established, rather than the manner of the physical construction of its facility" Moreover, the possibility of providing branching services through use of a mobile facility would appear rather unremarkable. As noted almost 30 years ago by the Court of Appeals for the Eighth Circuit, mobile branching is one way to maximize the offering of convenient and efficient financial services. In upholding the authority of the Federal Home Loan Bank Board to permit mobile facilities, the court stated:

A mobile facility offers the same services as a branch, but on a limited and part-time basis. . . . No radical concept underlies the placing of wheels under a structure so as to constitute an office capable of moving from place to place. The utility and sensibility of a traveling office as a method of providing limited savings and loan services needed by small community would seem rather obvious.

Central Savings and Loan Association of Chariton, Iowa v. Federal Home Loan Bank Board, 422 F.2d 504, 507-507 (8th Cir. 1970).

[N]othing in the McFadden Act requires that the Comptroller construe a state law that is silent as to the establishment and operation of mobile branches as prohibiting mobile branches. Indeed, it is quite reasonable for the Comptroller to construe a State law that permits branches to be established freely within a geographical area as permitting the establishment of a mobile branch that moves freely within that same geographical area and provides branching services at permissible branching locations. Where a State's legislature does not include a restriction in a branching statute, such a restriction should not ordinarily be read into that statute.¹⁹

Thus, under either manner of characterizing this application, because, as discussed, no geographical restrictions are imposed under Oklahoma's savings and loan association branching statute, no geographical restrictions are imposed on branching by national banks within Oklahoma. As a result, a national bank could operate a staffed van to provide branching services for the public generally at the six proposed sites.

By analogy, we also conclude that where, as here, the state commercial bank branching statute permits branching subject to numerical and geographical restrictions, a mobile van that provides branching services within those geographical constraints and at a number of sites that is consistent with the state's numerical restrictions also is consistent with the state's statutory framework and is permissible.²⁰

Nevertheless, we note that two statutory provisions found in Oklahoma's commercial bank branching laws may appear to call into question the conclusion that mobile branching is permitted in Oklahoma for state savings associations and state commercial banks. We note that the banking code contains a definition of a "mobile facility":

"Mobile facility" means any place of business separated from the main office or a branch office of a bank at which deposits are received, checks paid, or money lent and which is designed to be moved, picked up, rolled, pulled or driven. A mobile facility is

¹⁹ *E.g.*, Jackson Decision; Decision of the Comptroller of the Currency on the Application of Michigan National Bank, Farmington Hills, Michigan to Establish and Operate a Manned Van as a branch, 14-15 (September 11, 1992).

²⁰ Of course, the facility would also have to comply with any other relevant limitations in state law.

prohibited from operation except for use at an institution of higher education as set forth in [section 501.1.B].²¹

Section 501.1.B. of the commercial bank branching statutes, in turn, provides that:

Any main bank, branch bank or savings association located in a county where an institution of higher education is located may open accounts and accept deposits for not to exceed three (3) days per year on the campus of the institution of higher education at an institution-sponsored event if permission is granted by the institution. A bank or savings association may use a mobile facility for the purpose of opening accounts and accepting deposits as described in this subsection. Except as provided in this subsection, a mobile facility shall not be used for any other purpose.²²

²¹ *Id.* at tit. 6, sec. 102.45. Read literally, the definition encompasses only “mobile facilities” of a “bank.” “Bank,” in turn, is defined as “any bank authorized and chartered by the laws of this state to engage in the banking business, or any bank chartered by the office of the Comptroller of the Currency with its main office in this state.” *Id.* at sec. 102.3. In contrast, the banking code contains a separate definition of “savings association”: “any savings and loan association or savings bank chartered under the laws of this state or the laws of the United States authorized to engage in the savings and loan business with its main office located in this state.” *Id.* at sec. 102.59. Consequently, it could be argued that the authorization of, and limitation on, the use of mobile facilities of the type addressed in this definition and in the bank branching code applies only to mobile facilities operated by banks because mobile facilities operated by savings and loan associations do not come within the definition of a mobile facility. If that were so, the determination that mobile facilities operated by savings and loan associations were permissible would rest solely, as described previously, on the expansive provisions of the state savings and loan code governing branching by state savings associations. As will be discussed, however, this need not be the sole basis on which we may conclude that these provisions do not prohibit use of a mobile facility as proposed.

²² Okla. Stat. Ann. tit 6., sec. 501.1.B. (West 1996 & Supp. 1998). Despite the lifting of restrictions on branching by state-chartered savings and loan associations, the fact that the bank branching law still addresses the provision of branching services by savings associations at nonbranch locations on campuses of institutions of higher education is not surprising. See *supra* at n. 10. Moreover, even though these campus sites would no longer be off-limits as branch sites for savings associations, a state-chartered savings association might still find it advantageous to provide the limited services contemplated by the statute without the need to seek branch approval. (We note, though, that because these facilities would constitute branches for purposes of federal law under *Plant City*, compliance with applicable federal regulatory procedures would be required.)

At first blush, it would appear that these provisions prohibit the use of mobile facilities other than to open accounts and accept deposits for a limited period of time on the campus of an institution of higher education. The applicant contends, however, that what these provisions do is limit the ability of the main office or a branch office to provide branching services, through the use of mobile facilities, at other locations at which the bank has not, and perhaps could not, receive approval from the state. The OCC agrees.

The statutory language clearly supports the applicant's contention. The definitional provision underscores the point providing that:

“Mobile facility” means any place of business *separated from the main office or a branch office of a bank* at which deposits are received, checks paid, or money lent²³

The relevant provision of the state commercial bank branching code similarly provides:

*Any main bank, branch bank, or savings association . . . may open accounts and accept deposits . . . on the campus of the institution of higher learning A bank or savings association may use a mobile facility for [these purposes].*²⁴

Thus, mobile facilities as contemplated in the relevant statutes, are not themselves branches but rather are nonbranch devices used by banks, savings and loan associations, and branches to provide limited services at nonbranch locations where the bank otherwise had not received, or could not receive, approval to provide branching services.²⁵ It stands to reason then that the Oklahoma legislature, in adopting the provisions permitting banks to provide branching services through the use of mobile facilities at nonbranch locations, sought explicitly to limit the use of these facilities to only those locations -- that is campuses of institutions of higher education -- provided for by statute. We recognize that the need to explicitly provide such a limitation would be significant in a state like Oklahoma that historically has imposed rigid limitations on the branching rights of its financial institutions.²⁶ Absent the restriction, the loophole that would

²³ *Id.* at sec. 102.45 (emphasis added).

²⁴ *Id.* at 501.1.B. (emphasis added).

²⁵ O. Dudley Gilbert, general counsel to the state banking department, confirmed in a telephone conversation with OCC staff that financial institutions, under section 501.1.B., may provide services on the campuses of institutions of higher education without any branch or other application to the state. In contrast, section 501.1.F.1. prohibits the establishment and operation of branches without approval.

²⁶ *See supra* note 10.

have been created in the state's branch banking scheme would have been big enough to drive a nonbranch mobile van through.

The difference, of course, between the mobile facilities that are limited by statute and the mobile branch that the bank has proposed is that the proposed mobile branch would be approved to provide branching services, and would provide branching services, only at six sites, each of which as discussed, is a permissible site at which the national bank may operate a branch and provide branching services.

Consequently, for the reasons discussed above, we conclude that the establishment by the applicant of a mobile branch to provide branching services at the six proposed sites at which the bank may permissibly provide branching services is in accordance with section 36 and relevant state statutes applicable to state savings and loan associations and state commercial banks.²⁷

III. Other Considerations

In addition to legal considerations, the OCC is required to take into account the Community Reinvestment Act (CRA) record of an applicant for a branch, and other policy considerations set forth in OCC regulations.

In considering an application for a branch, the OCC is required to consider an applicant's record of compliance with the Community Reinvestment Act.²⁸ A review of the record in connection with this application and other information available to the OCC as a result of its regulatory responsibilities revealed no indication that the applicant's record of helping to meet the credit needs of its community, including low- and moderate- income neighborhoods, is not at least satisfactory. Moreover, no adjustment in the bank's assessment area is required. Consequently, the applicant's record of compliance with CRA is consistent with approval of this application.

OCC regulations governing the establishment and operation of branches also state that in determining whether to approve the establishment of a branch, the OCC is guided by the following principles: (1) maintaining a sound banking system; (2) encouraging a national bank to help meet the credits needs of its entire community; (3) relying on the market place as

²⁷ General Counsel Gilbert advised OCC staff that he was aware of this application and that the state had no objection to it. He noted that the proposed facility would provide services only at sites at which the bank could permissibly provide services through a detached facility.

²⁸ 12 U.S.C. 2903(2); 12 C.F.R. 25.29(a)(1).

generally the best indicator of economic activity; and (4) encouraging healthy competition to promote efficiency and better service to customers.²⁹

OCC regulations also provide for denial if (1) a significant supervisory, CRA, or compliance concern exists with respect to the applicant; (2) approval is inconsistent with applicable law, regulation, or OCC policy; or (3) the applicant fails to provide information requested by the OCC that is necessary for the OCC to make an informed decision.³⁰

As discussed, the proposed branch is consistent with applicable law and regulations and approval is consistent with the CRA. Based upon a consideration of these factors and the other factors set forth above, there is no reason to deny or condition approval of the application.

IV. Conclusion

For the reasons set forth above, and based on the representations of the applicant, we conclude that the application is in accordance with applicable law, consistent with the Community Reinvestment Act, and otherwise conforms to the policies of the OCC. Consequently, First Bethany Bank & Trust Company, National Association, Oklahoma City, Oklahoma, may establish a mobile branch to provide branching services at 2800 SE 27th Street, Oklahoma City, Oklahoma; 4050 W. I-40, Oklahoma City, Oklahoma; 3345 S. Ann Arbor, Oklahoma City, Oklahoma; 6729 NW 39th Expressway, Bethany, Oklahoma; 7600 NW 23rd Street, Bethany, Oklahoma; and 7300 Comanche Avenue, Warr Acres, Oklahoma.

_____/s/

Steven J. Weiss
Deputy Comptroller
Bank Organization and Structure

11-19-99
Date

Application Control Number: 99-SW-05-0145

²⁹ 12 C.F.R. 5.30(e).

³⁰ 12 C.F.R. 5.13(b).