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Two recent federal court decisions have brought into question for the first time the degree to which the federal law permitting the

* 234 F. Supp. 74 (D. Utah 1964).
** 236 F. Supp. 457 (D.D.C. 1964).

establishment of branches by national banks[1] incorporates state law restrictions upon the establishment of branches within a city in which the branching bank is already located. In *Walker Bank & Trust Co. v. Saxon*,[2] a national bank sought to branch within its home city of Logan, Utah. In addition to the applicant's main office, there were branches of two other banks in the city. The applicant national bank in *Commercial Security Bank v. Saxon*[3] and the complaining state bank had their principal offices and one branch in Ogden, Utah, the city in which the applicant sought to establish an additional branch. Two other state banks had their principal offices in that city.

The power of national banks to establish branches is governed by 12 U.S.C. § 36(c),[4] clause (1) of which permits a bank to establish branches within its home city if such branching is expressly authorized to state banks by state law.[5] Utah law permits the establishment of new branches in cities with populations below ninety thousand only if there is no bank located and regularly transacting business there; if there is, however, branches may be acquired by taking over an existing main office, but not by taking over a branch bank.[6] Of course, in all home-city branching situations there is a bank located and doing business in the city—the branching bank itself.

Neither applicant bank complied with the Utah statute. Nevertheless, the Comptroller of the Currency argued in both cases that if under any circumstances, whether or not in fact existent, a state bank could establish a branch in a particular city, then a national bank's application for permission to establish a branch may be approved *regardless* of its compliance with the specific standards of state law. In *Walker*, the United States District Court in Utah held that the Comptroller was not bound by the specific restrictions of Utah law since that state "expressly authorized" the establishment by state

1. 44 Stat. 1228 (1927), as amended, 12 U.S.C. § 36(c) (1964).

2. 234 F. Supp. 74 (D. Utah 1964).

3. 236 F. Supp. 457 (D.D.C. 1964).

4. "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 . . . ." 44 Stat. 1228 (1927), as amended, 12 U.S.C. § 36(c) (1964).

5. *Ibid.*

6. UTAH CODE ANN. § 7-3-6 (Supp. 1965) provides in part: "Except in cities [below 90,000 in population], or within unincorporated areas of a county in which [such a city] is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank."

banks of branches in the city in question.[7] However, in *Commercial Security Bank*, the United States District Court in the District of Columbia enjoined the Comptroller from authorizing the establishment of a branch bank, holding that the exact standards of the Utah branching law must be applied to the national banks.[8]

The court in *Walker* relied on the familiar rule that a statute is to be construed so that no part is superfluous.[9] In providing for the establishment of branches outside the bank's home city, clause (2) of section 36(c) states specifically that the establishment is subject to all restrictions as to location imposed by state law.[10] The lack of similar language in the first clause was construed by the court to indicate that Congress did not intend home-city branching to be subject to the state law restrictions on location.[11] Because the Utah prohibition on new branches in cities with existing facilities may be viewed as "a restriction as to location," the court's argument might seem persuasive. On the other hand, the Utah statute can be read as more than a restriction as to location; in practical effect it is an absolute prohibition on branching outside of Salt Lake County except by the acquisition of the principal office of another bank.[12] Thus, no branching is permitted state banks situated similarly to the national bank in *Walker*,[13] and in *Commercial Security Bank* no state bank could have established a branch in addition to the existing banking facilities. Furthermore, although the state statutory proscription may be unreasonable,[14] the Utah legislature has reaffirmed this restrictive view, despite the action of the Utah Commissioner of Banking in approving branching applications that did not comply with the statute.[15]

While the argument in *Walker* cannot be ignored, the legislative history of the McFadden Act of 1927,[16] which substantially embodied clause (1) of the present section,[17] would appear to support the

7. 234 F. Supp. at 77.

8. 236 F. Supp. at 461.

9. See, *e.g.*, SUTHERLAND, STATUTORY CONSTRUCTION 339 (3d ed. 1943). However, "the intention prevails over the letter, and the letter must if possible be read so as to conform to the spirit of the act." *Ibid.*

10. 48 Stat. 189 (1933), as amended, 12 U.S.C. § 36(c)(2) (1964).

11. Similarly, § 36(c) explicitly makes state minimum capital requirements applicable to out-of-town branches of national banks. 66 Stat. 633 (1952), 12 U.S.C. § 36(c) (1964). It seems clear that state capital requirements are not applicable to home-city branches. Bell, *National Bank Branches—The Authority To Approve and To Challenge*, 82 BANKING L.J. 1 (1965).

12. See text accompanying note 6 *supra*; Walker Bank & Trust v. Taylor, 15 Utah 2d 234, 390 P.2d 592 (1964); Note, *Branch Banking in Utah—Legal and Economic Analysis*, 9 UTAH L. REV. 372, 377-78, 384-86 (1965).

13. Walker Bank & Trust v. Taylor, *supra* note 12.

14. *Id.* at 237, 390 P.2d at 595. See Note, *supra* note 12, at 386.

15. UTAH CODE ANN. §§ 7-3-6.1, -6.2, -6.3 (Supp. 1965). See generally Walker Bank & Trust Co. v. Taylor, 15 Utah 2d 234, 238, 390 P.2d 592, 595 (1964).

16. 44 Stat. 1228 (1927), as amended, 12 U.S.C. § 36(c)(1) (1964).

17. The relevant clause of the McFadden Act read, "if such establishment and

reasoning in *Commercial Security Bank*. Lacking statutory authority to branch, the national banks were unable to reach financial resources available to state banks through branching;[18] the resulting imbalance threatened to destroy the national banks.[19] The passage of the McFadden Act was urged, therefore, to restore a workable competitive equality.[20] Although essentially opposed to branch banking,[21] Congress decided that home-city branching, which did not carry the same stigma as state-wide branching,[22] should be a question of local policy, subject to the control of the various state legislatures.[23] Although there is meager contemporary authority to indicate the precise extent to which Congress intended the specific restrictions of state law to be applicable to the branching of a national bank, there is some support for the *Commercial Security Bank* interpretation. The Senate sponsor of the bill was of the view that the limitation to two branches in Massachusetts law would *ipso facto* apply to the national banks there,[24] and similar views were expressed by the Attorney General in 1930 and 1931

operation are at the same time *permitted* to state banks by the law of the state in question." (Emphasis added.) "Permitted" was changed to "expressly authorized" in 1933. See note 35 *infra*.

18. Comment, 8 VILL. L. REV. 209, 212-15 (1963). For general discussions of branch banking prior to 1927, see BRADFORD, THE LEGAL STATUS OF BRANCH BANKING IN THE UNITED STATES 1-16 (1940); CHAPMAN & WESTERFIELD, BRANCH BANKING 84-108 (1942); 10 VA. L. REV. 548 (1924).

19. See 1924 COMPTROLLER OF THE CURRENCY ANN. REP. 4; 16 J. AM. BANKERS' ASS'N 450 (1924).

20. H.R. REP. No. 83, 69th Cong., 1st Sess. 6 (1926). Congressional intent to maintain a competitive equality in state and national branch banking was recently reaffirmed by passage of the 1962 amendment to 12 U.S.C. § 36(b), which explicitly stated that a national bank stands in the shoes of a state bank in several banking situations. 76 Stat. 667 (1962). See generally Bell, *supra* note 11.

21. S. REP. No. 473, 69th Cong., 1st Sess. 9 (1926); BRADFORD, *op. cit. supra* note 18, at 15-16; Paton, *The McFadden Bill Without the Hull Amendments*, 19 J. AM. BANKERS' ASS'N 432, 433 (1926). Although the Comptroller of the Currency was antagonistic toward branch banking, he urged passage of the McFadden Bill. 1925 COMPTROLLER OF THE CURRENCY ANN. REP. 2.

22. See BRADFORD, *op. cit. supra* note 18, at 15-16. See generally Breckenridge, *Constitutionality of Federal Branch Bank Legislation*, 19 ILL. L. REV. 629, 630 n.6 (1925).

23. Collins, *How Far Apart Are the Senate and House on the McFadden Bill?*, 19 J. AM. BANKERS' ASS'N 67, 107 (1926). The so-called "Hull Amendments" would have prohibited a national bank from branching in a state that amended its law after the passage of the McFadden Act to permit state banks to branch. H.R. REP. No. 83, 69th Cong., 1st Sess. 4 (1926). The Senate viewed this as an unwarranted intervention into state concerns. S. REP. No. 473, 69th Cong., 1st Sess. 9-10 (1926); 68 CONG. REC. 3576 (1927) (remarks of Senator Pepper). The Senate view prevailed. See generally CHAPMAN & WESTERFIELD, *op. cit. supra* note 18, at 104-07; Paton, *The McFadden Bill and Branch Banking*, 18 J. AM. BANKERS' ASS'N 257 (1925).

24. 68 CONG. REC. 3576 (1927) (remarks of Senator Pepper). "This proposed law does not authorize a national bank to establish any more branches, even within the municipal area, than are permitted under the law of the state . . . ." *Ibid.* Senator Pepper's interrogator did not share his view of the bill, nor did another senator. *Id.* at 3576 (remarks of Senator Walsh); *id.* at 3650 (remarks of Senator Wheeler).

regarding a Georgia law prohibiting branches in cities under a certain population[25] and a South Dakota law prohibiting branches in towns with established banking institutions.[26] Thus, the early interpretation of the section which now constitutes the first clause of section 36 (c) would indicate that national banks are to be subject to all state statutes imposing specific prohibitions on branch banking.[27] To hold otherwise would tend to reverse the competitive imbalance, because national banks could establish home-city branches where state banks would be specifically prevented from so doing.[28] In light of the legislative history of the McFadden Act, the resultant pressure on the states to liberalize their branching laws would be unjustified.[29]

Furthermore, there was no shift in legislative purpose between the enactment of clause (1) and of clause (2) which would warrant the different interpretation of the clauses suggested in *Walker*.[30] While the McFadden Act permitted only home-city branches, the National Banking Act of 1933[31] relaxed that limitation by allowing inter-city branching, but only to the extent permitted state banks by state laws.[32] As originally proposed, clause (2) would have permitted state-wide branch banking by national banks regardless of any prohibition in state law;[33] however, this proposal was criticized as supplanting with a national branch banking system the McFadden Act's policy of leaving branch banking generally under state controls.[34] In its place, therefore, an amendment was accepted author-

25. 36 OPS. ATT'Y GEN. 344 (1930).

26. 36 OPS. ATT'Y GEN. 450 (1931).

27. It has been suggested that the Comptroller must follow the state statutory provisions as to location and number of branches. Bell, *Branches of National Banks—Recent Cases on Review of Decisions of Comptroller of the Currency*, 78 BANKING L.J. 220, 224 (1961). National Bank v. Wayne Oakland Bank, 252 F.2d 537 (6th Cir.), *cert. denied*, 358 U.S. 830 (1958), and Commercial State Bank v. Gidney, 174 F. Supp. 770 (D.D.C. 1959), *aff'd per curiam*, 278 F.2d 871 (D.C. Cir. 1960), were cited as authority for this suggestion and were said to apply to any specific, nondiscretionary, statutory circumscription of branch banking. Bell, *supra*, at 224. However, state capital requirements for intra-city branches may be beyond the scope of this limitation. See note 19 *supra*.

28. Commercial Sec. Bank v. Saxon, 236 F. Supp. 457, 461 (D.D.C. 1964).

29. *Id.* at 461. It has been recognized that the *Walker* decision may undermine Utah law and that it will tend to create a strong impetus for changing that law. Note, *Branch Banking in Utah—Legal and Economic Analysis*, 9 UTAH L. REV. 372, 389 (1964).

30. 234 F. Supp. at 78. The court in *Commercial Security Bank* concluded that although the language varied, the clauses should be interpreted similarly because the underlying purpose of each was to establish competitive equality. 236 F. Supp. at 461.

31. 48 Stat. 189 (1933), as amended, 12 U.S.C. § 36(c)(2) (1964).

32. *Ibid.* For a discussion of the history of branch banking in the United States through the National Banking Act of 1933, see BRADFORD, *op. cit. supra* note 18; CHAPMAN & WESTERFIELD, *op. cit. supra* note 18; Comment, 8 VILL. L. REV. 209 (1963).

33. S. REP. No. 584, 72d Cong., 1st Sess. 16 (1932).

34. Comment, *Federalism in Interpretation of Branch Banking Legislation*, 32 U. CHI. L. REV. 148, 160 (1964). See also 76 CONG. REC. 1449 (1933) (remarks of Senator Bratton). See generally 37 OPS. ATT'Y GEN. 325, 326-28 (1933).

izing branch banks only when "permitted" to state banks by the law of the state. The amendment was perfected to read "expressly authorized," in order to ensure that branch banks would not be permitted "unless the legislature or the people themselves, through an initiative, actually by law say that they shall be permitted here."[35] Finally, "subject to the restrictions as to location" was added, although the rationale behind this addition does not readily appear.[36] It is therefore suggested that there is no difference between the clauses sufficient to warrant the application of statutory proscriptions as to inter-city but not home-city branching by national banks. As has been said with regard to clause (2), a national bank should have no greater right with respect to the location of branches than would a similarly located state bank.[37]

Home-city branching is but a minor aspect of the overall branching controversy, which has recently been intensified by population shifts to suburban areas.[38] It has not met with the same resistance as inter-city branching, and only two other states limit home-city branching in a fashion similar to Utah.[39] The Comptroller of the

35. 76 CONG. REC. 1997 (1933) (remarks of Senator Wheeler). Presumably for the same reason, the language in clause (1) was changed to its present form by the Banking Act of 1933, which embodied the proposal under discussion. Without explanation, the conference committee rewrote clause (2) into its present form by striking the word "expressly," modifying "law" with "statute," and adding the phrase "by language specifically granting such authority affirmatively and not merely by implication or recognition." 37 OPS. ATT'Y GEN. 325, 328 (1933).

36. Senator Blaine asked Senator Bratton whether the language, "and under restrictions as to location imposed by the law of the state on state banks," was embraced in his proposed amendment. Senator Bratton replied that it was not included in the text as he read it, but he was agreeable to it as an amendment. 76 CONG. REC. 2079 (1933). Senator Bratton subsequently changed his amendment to include that language. 76 CONG. REC. 2205 (1933).

37. See National Bank v. Wayne Oakland Bank, 252 F.2d 537 (6th Cir.), *cert. denied*, 358 U.S. 830 (1958); South Dakota v. National Bank, 219 F. Supp. 842 (D.S.D. 1963), *aff'd*, 335 F.2d 444 (8th Cir. 1964); Suburban Trust Co. v. National Bank, 211 F. Supp. 694 (D.N.J. 1962); Commercial State Bank v. Gidney, 174 F. Supp. 770 (D.D.C. 1959), *aff'd per curiam*, 278 F.2d 871 (D.C. Cir. 1960). The plaintiffs in both *Walker* and *Commercial Security Bank* cited these cases as authority for the proposition that Utah laws must be complied with fully. The court in *Walker* distinguished these cases as constructions of clause (2), 234 F. Supp. at 78; however, the court in *Commercial Security Bank* found them apposite, 236 F. Supp. at 461. Union Savings Bank v. Saxon, 335 F.2d 718 (D.C. Cir. 1964), has been deemed contrary to *Walker*. 82 BANKING L.J. 111, 117 (1965). That case, however, was an interpretation of clause (2).

38. See generally Comment, *Branch Banking—The Current Controversy*, 16 STAN. L. REV. 983 (1964); Comment, *supra* note 34; Sheehan, *What's Rocking Those Rocks, the Banks?*, Fortune, Oct. 1963, p. 108.

39. ORE. REV. STAT. § 714.050 (1963); S.D. CODE § 6.0402 (Supp. 1960). Washington, while permitting home-city branch banking, restricts inter-city branching in language similar to the Utah restriction. WASH. REV. CODE ANN. § 30.40.020 (1961). Seven states limit home-city branching: ALA. CODE tit. 5, § 125(1) (1960) (only in counties over 200,000 population); CONN. GEN. STAT. ANN. § 36-59 (1960) (number of branches limited according to capital and surplus of bank); HAWAII REV. LAWS § 178-39 (Supp. 1963) (number of branches limited according to bank zone); IND. ANN.

Currency has sought amendment of the branching provisions to free national banks entirely from state branching restrictions, which he feels frustrate national economic growth and preserve "pockets of monopoly" in the banking industry.[40] The Comptroller argues that branch banking is preferable to the establishment of new banks in meeting the need for adequate, convenient banking facilities in areas of recent population growth, as well as in providing desirable competition.[41]

Notwithstanding the Comptroller's position and the contrast in language within section 36(c), Congress has clearly deferred to state policy in permitting branch banking, both inside and outside the home city. In light of the congressional intent to equalize competitive conditions between the state and national banks, and because of the resultant pressures on state legislatures if the *Walker* rationale were to prevail, it would appear that the better view regarding the interpretation of clause (1) is represented by the reasoning of the court in *Commercial Security Bank.*

STAT. § 18-1707 (1964) (number of branches limited according to capital and surplus and size of city); LA. REV. STAT. ANN. § 6:244 (1951) (2 branches in parish of domicile); MISS. CODE ANN. § 5228 (1957) (when population not less than 10,000); OHIO REV. CODE ANN. § 1103.09 (Page 1954) (only as designated in articles of incorporation except in a contiguous municipality or other parts of county of domicile). Sixteen states prohibit branch banking. See Comment, 32 U. CHI. L. REV. 148, 150 n.11 (1964). In addition to the above, thirteen states put significant limits on the location of branches. *Id.* at 150 n.12.

40. *Hearings on Conflict of Federal and State Banking Laws Before the House Committee on Banking and Currency*, 88th Cong., 1st Sess. 276-78, 372 (1963).

41. *Ibid.* See generally authorities cited *supra* note 36. It is unlikely that the Comptroller will be successful. Comment, 32 U. CHI. L. REV. 148 n.3 (1964). *But see* Comment, 16 STAN. L. REV. 983, 995 (1964). It should be noted that other alternatives for expansion, *e.g.*, chain and group banking, are available in lieu of direct branching. See the authorities cited *supra* note 38; Bell, *supra* note 11.