

OPINION NO. 84-039

Syllabus:

Pursuant to R.C. 135.04, any bank mentioned in R.C. 135.03 that has an office located within the territorial limits of a township is eligible

to become a depository of the township's funds, even though the only office within the township is an automatic teller device.

To: Wilfrid G. Dues, Preble County Prosecuting Attorney, Eaton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 16, 1984

I have before me your request for my opinion on whether an automatic teller device¹ is a "bank" or "branch bank" for purposes of R.C. Chapter 135, the Uniform Depository Act.

R.C. 135.03 reads in part:

Any national bank located in this state and any bank as defined by section 1101.01 of the Revised Code, subject to inspection by the superintendent of banks, is eligible to become a public depository, subject to sections 135.01 to 135.21 of the Revised Code. No bank shall receive or have on deposit at any one time public moneys, including public moneys as defined in section 135.31 of the Revised Code, in an aggregate amount in excess of thirty per cent of nonpublic moneys on deposit as shown in its latest report to the superintendent of banks or comptroller of the currency.

R.C. 135.04(E) provides that, "[a]ny institution mentioned in section 135.03 of the Revised Code that has an office located within the territorial limits of a subdivision is eligible to become a public depository of the inactive and interim deposits of public moneys of such subdivision." Pursuant to R.C. 135.04(F), "[a]ny institution mentioned in section 135.03 of the Revised Code that has an office located within the territorial limits of a subdivision is eligible to become a public depository of the active deposits of public moneys of such subdivision."² It is my understanding that there is a bank which has installed an automatic teller device in a township in Preble County, but has no other establishment or place of business in the township. You wish to know whether this bank is eligible to become a depository of the township's moneys. See R.C. 135.01(L) (a township is a "subdivision" for purposes of R.C. 135.01-.21).

Of those banks mentioned in R.C. 135.03 as eligible to become public depositories, I turn first to a consideration of national banks, which are organized and otherwise provided for pursuant to 12 U.S.C. §§21-216d. 12 U.S.C. §21 provides for the formation of associations "for carrying on the business of banking" under that chapter. The Comptroller of the Currency issues to such an association a certificate of authority to commence banking upon the association's fulfillment of certain requirements. See 12 U.S.C. §§26, 27. An association meeting specified requirements is a body corporate and has those powers specified in 12 U.S.C. §24

¹ An automatic teller device, commonly referred to as a customer-bank communication terminal (CBCT) is an electronic bank facility which provides for the electronic deposit, withdrawal, and transfer of funds in bank customers' accounts. See State of Missouri ex rel. Kostman v. First National Bank, 538 F.2d 219 (8th Cir. 1976), State of Illinois ex rel. Lignoul v. Continental Illinois National Bank and Trust Co., 536 F.2d 176 (7th Cir. 1976), Independent Bankers Association of America v. Smith, 534 F.2d 921 (D.C. Cir. 1976), and State of Oklahoma ex rel. State Banking Board v. Bank of Oklahoma, 409 F. Supp. 71 (N.D. Oklahoma 1975) for further descriptions of these machines. See 15 U.S.C. §§1693-1693r (the Electronic Fund Transfer Act, part of the Consumer Credit Protection Act); 12 C.F.R. Pt. 205.

² I note that under certain circumstances, such as where there is no eligible institution, or not more than one eligible institution, in a subdivision, the governing board of the subdivision may designate as a public depository of its moneys, one or more institutions of the type mentioned in R.C. 135.03 that are conveniently located. R.C. 135.04(E) and (F).

and elsewhere within the chapter. Thus, a national bank is an association organized and qualified pursuant to 12 U.S.C. §§21-216d to conduct a banking business. An automatic teller machine is not such an association, and is not, therefore, a bank itself.

It is now well established, however, that automatic tellers which are installed by a national bank off the bank's premises are branches of the bank. Pursuant to 12 U.S.C. §36(f), the term "branch" includes "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." Various courts have interpreted this language, almost without exception, as including automatic teller devices. See State of Colorado ex rel. State Banking Board v. First National Bank, 540 F.2d 497 (10th Cir. 1976); State of Missouri ex rel. Kostman v. First National Bank, 538 F.2d 219 (8th Cir. 1976); State of Illinois ex rel. Lignoul v. Continental Illinois National Bank and Trust Co., 536 F.2d 176 (7th Cir. 1976); Independent Bankers Association of America v. Smith, 534 F.2d 921 (D.C. Cir. 1976). But see State of Oklahoma ex rel. State Banking Board v. Bank of Oklahoma, 409 F. Supp. 71 (N.D. Oklahoma 1975) (holding customer-bank communication terminals maintained by national banks were not branches; state law, however, prohibited branch banking). Thus, if a national bank establishes an off-premises CBCT, such device is considered a branch of the bank.

I turn now to banks which are organized and operate under state law. R.C. 1101.01(B) defines "bank" as:

any corporation soliciting, receiving, or accepting money or its equivalent on deposit as a business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, passbook, note, receipt, ledger card, or otherwise, and also includes commercial banks, savings banks, trust companies, and special plan banks, but does not include any building and loan association, credit union, or federal savings and loan association.

A bank is a corporation organized and qualified pursuant to R.C. Chapters 1101, 1103, and 1105. See R.C. 1101.04; R.C. Chapter 1107 (powers of banks). Since an automatic teller device is not itself such a corporation, it is not a bank, as defined in R.C. 1101.01(B), for purposes of R.C. Chapter 135.

Although an automatic teller device is not a bank under state law, it does appear that an automatic teller which is installed off the bank's premises, see R.C. 1101.01(E)(3), is a branch of such bank. R.C. 1101.01(E) defines a "branch" as "an office or other place at which a bank receives money or its equivalent from the public for deposit and conducts a general banking business, but does not include a bank's principal place of business."³ R.C. 111.03(A) reads in part:

Only a bank whose principal place of business is in this state may establish and maintain one or more branches in this state. A bank shall not establish a branch until it obtains the consent of the

³ Pursuant to 12 U.S.C. §36(c), a national bank may establish a branch "only when, where, and how state law would authorize a state bank to establish and operate such a branch." First National Bank v. Dickinson, 396 U.S. 122, 130 (1969). See First National Bank v. Walker Bank and Trust Co., 385 U.S. 252 (1966). Indeed, if state law prohibits its own banks from branching, then national banks may not branch in that state. See First National Bank v. Dickinson; First National Bank v. Walker Bank and Trust Co. Federal law, however, is exclusively determinative as to what constitutes a branch of a national bank. First National Bank v. Dickinson.

⁴ A bank's "principal place of business," is "the location of the 'principal office' or 'main office' of a bank as named in its articles." R.C. 1101.01(T).

superintendent of banks, as provided in this chapter, and unless it is located within the following geographical areas:

. . . .

(5) On or after January 1, 1979, a bank may establish a branch, the primary purpose of which is to enable by electronic means the deposit of funds into or the withdrawal of funds from an account or the transfer of funds to or from an account, only in the following geographical areas in this state:

(a) The county in which the bank maintains its principal place of business;

(b) Any county in which the bank maintains a branch that is staffed by a full-time loan officer and that offers loans of the same type and in the same amounts as loans offered at the bank's principal place of business or branches in the county in which the bank maintains its principal place of business.

See R.C. 1125.16(F) (each bank must pay to the superintendent of banks one thousand dollars for investigation of applications for new branches and shall pay five hundred dollars "for investigation of applications for a new customer-bank communications terminal branch bank, as provided for in [R.C. 111.03(A)(5)]"). If R.C. 1101.01(E) were considered alone, it does not appear that an automatic teller would qualify as a branch. A branch, as defined in R.C. 1101.01(E), is a place for receiving deposits and at which a general banking business is conducted. While an automatic teller is a place at which a bank receives money for deposit, a bank does not conduct a general banking business at such a machine.⁵ See, e.g., R.C. 1107.03 (power of a bank to transmit money to foreign countries); R.C. 1107.09 (a bank may provide safes, vaults, and safe deposit boxes); R.C. 1107.12 (a bank may loan money). See also State of Oklahoma ex rel. State Banking Board v. Bank of Oklahoma, 409 F. Supp. at 83-84 (holding that CBCT's are not branches, stating that CBCT's "are capable of performing only a small portion of the functions generally associated with banking, whether at the chartered banking house or at a branch," and that "where branch banking is permitted, such branches are manned and staffed by people as employees and agents of the bank and have the capability of performing all functions of the general banking business, to the extent bank management opts to conduct business at a branch"). However, when R.C. 1101.01(E) is considered with R.C. 111.03(A)(5) and R.C. 1125.16(F), it is apparent that automatic teller machines which are located off a bank's premises are branches of such bank. See State of Colorado ex rel. State Banking Board v. First National Bank (while a typical bank provides many services other than those provided by a CBCT, a CBCT is still a branch bank). A teller machine is a specific type of branch, see R.C. 111.03(A)(5), R.C. 1125.16(F), but a branch nonetheless.

In specific response to your question, I conclude that automatic teller devices are not "banks," but are "branches" of both national and state banks. Returning to R.C. Chapter 135, however, R.C. 135.04 provides that qualified institutions which have an office located within the limits of a subdivision are eligible to become a

⁵ But see R.C. 1.02(F) ("and" may be read as "or" if the sense requires it). It is arguable that if "and" is not read as "or" in the phrase defining branch as a place where "a bank receives money. . . for deposit and conducts a general banking business," the phrase is redundant since the acceptance of money for deposit is part of a bank's general business. See R.C. 1107.06. Compare R.C. 1101.01(E) with 12 U.S.C. §36(f) which defines "branch" in the disjunctive. "[T]he offering of any one of the three services mentioned in that definition will provide the basis for finding that 'branch' banking is taking place." First National Bank v. Dickinson, 396 U.S. at 135. See State of Missouri ex rel. Kostman v. First National Bank.

depository of the moneys of the subdivision. Thus, it must be determined whether an automatic teller device is an office of a bank for purposes of R.C. 135.04.⁶

Returning to the definitions of "branch," 12 U.S.C. §36(f) defines the branch of a national bank as "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." (Emphasis added.) R.C. 1101.01(E) defines the branch of a state bank as "an office or other place at which a bank receives money or its equivalent from the public for deposit and conducts a general banking business, but does not include a bank's principal place of business." (Emphasis added.) Both definitions seem to contemplate that a branch may be located at a place other than an office, as well as at an office. Resort to the plain meaning of office, see R.C. 1.42, is not determinative. Webster's New World Dictionary 987-988 (2d college ed. 1978) defines "office" as, "the building, room, or series of rooms in which the affairs of a business, professional person, branch of government, etc. are carried on." Such a description of office would not appear to include an automatic teller device. In the alternative, however, "office" may have a broader connotation. Black's Law Dictionary 976-977 (5th ed. 1979) defines "office" as, "[a] place for the regular transaction of business or performance of a particular service," which would appear to encompass an automatic teller device.

In 1983 Op. Att'y Gen. No. 83-008, I concluded that a branch was an office for purposes of R.C. 135.04, and thus a financial institution with only a branch in Columbus was eligible to become a depository of active state funds. See R.C. 135.04(B) ("[a]ny such institution [mentioned in R.C. 135.03] having an office in Columbus is eligible to become a public depository of the active deposits of public moneys of the state"). This conclusion is in accord with the conclusion reached by the court in State ex rel. First National Bank v. Board of Education, 4 Ohio App. 2d 258, 212 N.E.2d 80 (Lucas County 1965), aff'd, 8 Ohio St. 2d 3, 220 N.E.2d 671 (1966). The matter of automatic teller devices was not specifically considered in State ex rel. First National Bank or in Op. No. 83-008. The reasons which led to the conclusion in both State ex rel. First National Bank and in Op. No. 83-008 that a branch is an office, however, also lead me to believe that an automatic teller device is an office.

From reading the various provisions of R.C. Chapter 135, it is apparent that in using the word office, the General Assembly meant to include both the principal place of business of a bank and all of its branches. For example, R.C. 135.04(H) states: "The term 'permanent offices' as used in this division means the principal office and branches not including intermittent branches." See R.C. 1101.01(R) (an "intermittent branch" is "a branch at which a bank receives money or its equivalent for deposit on not more than three days a week at a given location, is housed in either a building or a mobile facility, and has been approved by the superintendent [of banks]"). As explained in Op. No. 83-008 at 2-40, "[t]he term 'office' cannot be interpreted to exclude branches when the more restrictive term 'permanent offices'

⁶ In setting forth your question, you reference R.C. 135.32, which sets forth those institutions which are eligible to become public depositories of county moneys. It is my understanding, however, that you are concerned with the eligibility of institutions to become depositories of township moneys, which is covered by R.C. 135.03 and R.C. 135.04. See R.C. 135.01(L). The situation you present could never arise in the context of depositories of county funds. Pursuant to R.C. 135.33(B) and R.C. 135.35(A)(3), in order to become a depository of the active and inactive moneys, respectively, of the county, an institution must have an office in the county. Pursuant to R.C. 111.03(A)(5), set forth above, a branch, the primary purpose of which is the electronic transfer of funds, may only be established in the county where the bank maintains its principal place of business or in a county in which the bank maintains a branch staffed by a loan officer and which offers loans. Thus, a bank, whether a state or national bank, see footnote 3, may never have only an automatic teller type device located in the county.

includes branches which are not intermittent branches." Op. No. 83-008 also noted that, "R.C. 135.01(C), in defining 'capital funds,' provides for the case where an institution has offices in more than one county. By definition, a bank cannot have more than one principal place of business. Thus, in order for the situation to arise whereby an institution would have offices in more than one county, 'offices' would have to include branches." (Footnote omitted.) *Id.* Op. No. 83-008 concluded that in order to read R.C. 135.04 in an internally consistent manner, as well as in a manner consistent with the other provisions of R.C. Chapter 135, office must be read to include branches.

Once it is concluded, therefore, that an automatic teller device constitutes a branch, it necessarily follows that an automatic teller device is an office for purposes of R.C. 135.04(E) and (F). Although intermittent branches have been distinguished from other types of branches in R.C. 135.04(H) for purposes of determining what is a permanent office, there is no language in R.C. Chapter 135 which distinguishes automatic tellers from other types of branches for determining what constitutes an office for purposes of that chapter. Although R.C. 1101.01(E) in defining branch makes a distinction between an office and other types of places, it is apparent that there is no provision in R.C. Chapter 135 for a type of branch which is not an office. As used in R.C. 135.04, office must be read to include all branches. Thus, pursuant to R.C. 135.04, a township may designate a bank mentioned in R.C. 135.03 to be a depository of the township's funds even though the bank has only an automatic teller device within the territorial limits of the township.

In conclusion, it is my opinion, and you are advised, that pursuant to R.C. 135.04, any bank mentioned in R.C. 135.03 that has an office located within the territorial limits of a township is eligible to become a depository of the township's funds, even though the only office within the township is an automatic teller device.