

OPINION
65-27

August 24, 1965 (OPINION)

Mr. Eugene Rich

State Examiner

RE: Banks - State Banking Board - Insurance

This is in response to your letter in which you advise that the State Banking Board granted authority to the Pioneer State Bank of Towner, North Dakota, to open a paying and receiving station at Willow City, North Dakota, provided that the bank will obtain F.D.I.C. insurance for the accounts accepted at the station. The bank itself is not insured.

You also call our attention to Chapter 85 of the 1965 session laws, which amends Section 6-02-03 of the North Dakota Century Code. This section pertains to the required capital stock and surplus as a prerequisite for commencing business. As is material here the statute, as amended, also provides as follows: "* * * The board may require such insurance on deposits as it may deem necessary to properly protect the public interest." You then ask for an opinion whether or not the Board has the legal right to make such requirement.

The authorization and requirements for a paying and receiving station are found in Section 6-03-14 of the 1965 Supplement to the North Dakota Century Code and provides as follows:

"PAYING AND RECEIVING STATIONS AUTHORIZED. Any banking institution may establish and maintain within the county in which the home office of the applicant banking institution is located, or in any adjoining county, subject to the approval and supervision of the state banking board, a receiving and paying station in any city, town, or village organized under the laws of this state not having an established banking institution located therein. Provided, however, this limitation shall not apply to any banking institution which has already received a permit for the construction of such a receiving and paying station. No additional capital shall be required for the operation of such station. This section shall not be construed as committing this state in any manner to a policy of permitting branch banking." (Emphasis supplied.)

Section 6-03-16 sets forth the investigation to be conducted and the procedure to be followed in processing and considering applications for a paying and receiving station. The significant portion of this section is as follows: " * * *if it shall find that public convenience and advantage will be promoted thereby, and that the capital of the applicant bank is unimpaired and its management good." The Board may issue a permit to establish a paying and receiving station if its findings are as provided for by statute. In reviewing the other related sections, we do not find that deposit insurance is required for a paying and receiving station.

It is a basic rule of law that officials have only such power and authority as is granted to them by statute or as is necessarily implied from such statutes to carry out the functions and duties of the office. In the case of *Verhelle v. Eveland*, 81 N.W.397, the Supreme Court of Michigan held that the banking commissioner had no authority to require a bank to secure federal deposit insurance as a condition to maintain and operate a bank where the statute did not set forth such requirement. The principle of law as stated by the Michigan Court is applicable to the instant matter.

The North Dakota Supreme Court has not ruled on this specific question, but on a related matter the Burleigh County District Court as pertaining to a savings and loan association (Great West Savings & Loan Association) in *Eid, et al v. Rich, et al*, held that the Banking Board did not have authority to require a savings and loan association to secure federal deposit insurance before it could engage in such business where the statutes did not require the insurance. The court in its memorandum opinion of June 16, 1964, said that the Board exceeded its authority in making it a requirement that said association secure F.D.I.C. insurance before it would be authorized to do business.

On the basis of the foregoing, it is our opinion that the State Banking Board could not require that a paying and receiving station first obtain F.D.I.C. insurance before authorizing the establishment and maintenance of a paying and receiving station if the other conditions as set forth in Section 6-03-16 are met.

We also take note that the Board may not require additional capital of the bank before it may operate a paying and receiving station. The section authorizing the Board to require the banks to obtain insurance on deposits relates only to the bank and not to the paying and receiving station alone. However, if the capital and surplus of the bank were to become strained as the result of operating a paying and receiving station, the Board could then require the bank to secure the necessary insurance. The paying and receiving station being an agent of the bank, such insurance would automatically cover the paying and receiving station. The deposits are made with the bank through the paying and receiving station. The station is a transmitting agent for the bank. If the Board were to require the bank to obtain F.D.I.C. insurance it would have to be on a finding supported by substantial evidence that the operation of a paying and receiving station would strain or otherwise jeopardize the deposits of the bank. It might be difficult to establish the necessary facts to support such a finding.

It is further observed that the statute merely permits the Board to require insurance on deposits. The statute does not specify from whom the insurance must be obtained. It could well be that the common type of insurance is with F.D.I.C. but, nevertheless, we cannot as a matter of law state that the insurance must be obtained from F.D.I.C.

In conclusion, it is our further opinion that while the insurance requirement has no direct relation to the operation of a paying and receiving station and applies only to the bank itself, the insurance

requirement may be imposed upon the bank if the operation of a paying and receiving station will substantially strain or jeopardize the capital and surplus of the bank and the deposits in such bank. However, as stated earlier, such requirement would have to be based on substantial evidence. Section 6-03-14 specifically provides in part: " * * * No additional capital shall be required for the operation of such station. * * * " This creates a statutory presumption as to the financial import a paying and receiving station may have on the bank proper. Any evidence to support a finding to the contrary would have to be substantial and of significant weight to overcome the presumption.

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