

**OPINION
69-30**

August 14, 1969 (OPINION)

The Honorable Theodore A. Lang

State Representative, Thirty-second District

Sterling, North Dakota

RE: Banks - Paying and Receiving Station - Authorization

This is in reply to your letter of July 30, 1969, which we received on August 13, 1969, relative to section 6-03-14 of the North Dakota Century Code. You note this section was amended in 1963, and ask the following question:

Would the present establishment and maintenance of a receiving and paying station by a banking institution, pursuant to an order of the North Dakota State Banking Board dated prior to the amendment of the statute by the 1963 Legislative Assembly, be in violation of Section 6-03-14 of the 1969 Supplement to the North Dakota Century Code?"

Section 6-03-14 of the North Dakota Century Code, as amended, and currently in force, provides:

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, or in any other county provided the location of the community to be served is within a thirty-five mile radius of such home office, 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."

Section 6-03-14 of the North Dakota Century Code, prior to its amendment in 1963, provided:

"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 community not having an established banking institution. 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."

It would appear the amendments made to the provisions of section 6-03-14 of the North Dakota Century Code by the 1963 and 1967 Legislative Assemblies must be considered in answering the question. The 1963 amendment (see Chapter 97, 1963 S.L.) consisted of deleting the word "community" and inserting in lieu thereof the words "any city, town, or village organized under the laws of this state not having an established banking institution located therein." In effect the Legislature, by the 1963 amendment, required that the location of the station be in a city, town, or village, which indicates a public corporation, rather than a community which could include an unorganized area or only a part of an incorporated city or village. See opinion of Attorney General to Eugene Rich, State Examiner, on October 24, 1962. However, the 1963 Legislature added the further provision that such limitation should not apply to any banking institution which had already received a permit for the construction of a receiving and paying institution. The 1963 amendment carried an emergency measure and was approved March 21, 1963.

The 1967 amendment (see Chapter 86, 1967 S.L.) consisted of the addition of the provision permitting a paying and receiving station to be established in any county provided the location of the community to be served is within a thirty-five mile radius of the home office of the bank. Presumably this amendment is not of concern to you.

It would appear your question would be concerned with a paying and receiving station established (1) in an unincorporated community rather than an incorporated city, town or village or, (2) in a portion of a city, town or village which would constitute a "community" which had a banking institution therein. We must note, however, that the 1963 Legislature specifically stated that such limitation should not apply to any banking institution which had already received a permit for the construction of a receiving and paying institution prior to the effective date of the Act, i.e., March 21, 1963. In this regard it must be noted the only requirement for the exception to be operative is that the banking institution have received a permit for the construction of the paying and receiving station prior to March 21, 1963. The proviso did not require the actual establishment of the station prior to that time.

Insofar as the effectiveness of the order of the Banking Board is concerned, section 6-01-05 of the North Dakota Century Code provides in part:

* * * Any and all orders made by the board shall be operative immediately and shall remain in full force until modified, amended, or annulled by the board, or by a court of competent jurisdiction in an action commenced by the party against whom such order has been issued."

This would require affirmative action of the Banking Board to modify, amend, or annul the effect of the order unless such order was appealed to a court which directed a different result.

Assuming, therefore, that the order of the State Banking Board has not been amended, modified or annulled by the Banking Board or by a court of competent jurisdiction, and is thus in full force and effect, it is our opinion that the present establishment and maintenance of a receiving and paying station by a banking institution, pursuant to an order of the North Dakota State Banking Board issued prior to the effective date of the amendment of section 6-03-14 of the North Dakota Century Code by the 1963 Legislative Assembly, would not be in violation of section 6-03-14 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General