

**OPINION
71-26**

May 21, 1971 (OPINION)

Mr. G. W. Ellwein

Commissioner

Department of Banking and Financial Institutions

RE: Banks - Facilities - Definition

This is in response to your letter in which you ask for a clarification of the word "facility" as the same is used in Sections 6-03-13.1, 6-03-13.2, 6-03-13.3 and 6-03-13.4. You then ask for "an opinion as to the intent of the aforementioned codes with respect to the numbers of drive-in and walk-up windows a facility may provide."

The statutory provisions mentioned in the above sections are as follows:

"6-03-13.1. SEPARATE DRIVE-IN FACILITY AUTHORIZED. Every bank organized under chapter 6-02 of the North Dakota Century Code, and under the supervision of the state banking board, and any national bank doing business in this state, may, upon compliance with sections 6-03-13.1 through 6-03-13.4, maintain and operate separate and apart from its banking house one facility for drive-in and walk-up service, whereat the services rendered shall be limited to receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, and receiving payments payable at the bank."

"6-03-13.2. FURTHER LIMITATIONS UPON FACILITY. No bank may maintain or operate under sections 6-03-13.1 through 6-03-13.4:

1. More than one such facility either attached to or separate and apart from its banking house at the same time, except facilities required by the United States government to be maintained by it as financial agent of the government on government reservations solely for military and other government personnel, provided, however, that nothing in this section shall be construed to authorize any bank to establish or maintain such facilities as financial agent of the government on government reservations; or
2. Such a facility located more than fifteen hundred feet from its banking house; or
3. Such facility separate and apart from its banking house without first having obtained the approval of the state banking board."

"6-03-13.3. FACTS CONSIDERED FOR APPROVAL. Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to sections 6-03-13.1 through 6-03-13.4, or to move a facility previously established to

another location, it shall apply to the state banking board for such authority and provide the board with such relevant information as the board may reasonably request. In determining whether or not to approve the application for such facility, the banking board shall take into consideration the following facts:

1. The convenience, needs and welfare of the people of the community and area served;
2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility; and
3. Whether other banks will be seriously injured by the approval of the application."

"6-03-13.4. EFFECT OF AUTHORITY. Nothing in sections 6-03-13.1 through 6-03-13.4 shall be deemed to authorize the maintenance or operation of a branch bank, but a facility authorized hereunder may be supplementary or in addition to paying and receiving stations permitted under section 6-03-14 of the North Dakota Century Code. National banking associations located in this state shall have the same, but no greater right by virtue of sections 6-03-13.1 through 6-03-13.4 as banks organized under the laws of this state."

Your specific question is whether or not a bank may have drive-in or walk-up service with more than one window.

We note that Section 6-03-13.1 provides that a bank may have one facility for drive-in and walk-up service. Neither the term "facility," "drive-in," nor "walk-up" service is defined. The term "facility" takes on a special meaning after considering the manner in which such term is used in Sections 6-03-13.1 through 6-03-13.4. We will not endeavor to define what constitutes a drive-in or what constitutes a walk-up service. The term "facility" refers to a drive-in and walk-up service. In Section 6-03-13.2, we find the expression "such facility" which clearly refers to the facility mentioned in Section 6-03-13.1. The facility mentioned in said section embraces both the drive-in and walk-up service.

We must assume that the Legislature had reference to a conventional type drive-in or walk-up service. We do not believe that the terms "drive-in and walk-up service" are to be given a technical, limited meaning as the words in a technical sense would imply. If we were to do this, we would wind up with a ridiculous result. The phrase "drive-in," if given a technical meaning, would envision a place where a person can drive in with a car. The more proper description would be a drive-up, but yet the Legislature used the term "drive-in." We are satisfied that the Legislature in using these terms meant to use them in the manner that they were understood by the general public at the time the act was introduced and passed.

We are not aware of any general concept or understanding that a drive-in or walk-up service by custom or otherwise is limited to a single service window.

We do recognize that the term "facility" is used in the singular. However, at the same time we are convinced that such singularity applies to the facility without any specific reference to service windows.

Where the Legislature did not define what constitutes a drive-in and walk-up service we cannot as a matter of law define such service particularly with reference to such details as the number of service windows such facility may have.

We must observe that the Legislature did not limit the size of the facility by number of feet or direct the type of material to be used in constructing the facility, nor did it provide the shape and form of the facility.

We are of the opinion that where the Legislature used the term "facility" it referred to a drive-in and walk-up service meaning that under certain conditions a bank may have a drive-in and walk-up service for its patrons. It is our further opinion that the Legislature was not concerned with the number of windows a drive-in or walk-up service may have. We cannot as a matter of law state that a drive-in or walk-up service may have only one, two, or more windows.

HELGI JOHANNESON

Attorney General