

OPINION
56-13

June 18, 1956 (OPINION)

BANKS

RE: Authority to Own and Operate Parking Lots

In your letter of June 6, 1956, you request an opinion as to the legal basis on which banks established under the laws of North Dakota may own and operate automobile parking lots.

This office has searched the banking laws without finding any reference therein to parking facilities. The present statute, Chapter 99 of the 1955 laws, impliedly authorizes a state banking association to "invest in a banking house, including the lot, piece or parcel of land on which the same is located, and in furniture and fixtures used in such banking house". Our banks are authorized to exercise "such incidental powers as shall be necessary to carry on the business of banking". See section 6-0302 N.D.R.C. of 1943, paragraph 8. What constitutes a suitable establishment for a bank in a particular locality is a problem to be solved by the use of good business judgment. It is common knowledge that the business of banking has been affected by the ever increasing public use of automobiles in about the same way other businesses have been affected, particularly where the premises at which business is done are located in tightly built-up business districts. Newly designed bank buildings in many parts of the county contain stalls, driveways, and ramps for the convenience of customers who prefer to drive their cars to the bank. The extent of such facilities would seem to depend primarily on sound bank management. In the case of *Sarles v. Scandinavian American Bank*, 33 N.D. 40, 156 N.W. 556, the Supreme Court upheld construction of a five story fireproof building of which less than half was intended to be used directly for banking purposes. In the case of *Farmers' State Bank v. Richter*, 48 N.D. 1233, 189 N.W. 242, the court upheld a purchase of stock by a bank as being a proper expense incidental to the obtaining of electric light and power for the bank building under the circumstances of the case. We know that modern conditions in some localities have made the operation of automobile parking lots and garages profitable business ventures, and that many concerns have found it profitable to maintain parking lots primarily for the convenience of their own customers.

From your letter I infer that it has long been the practice to construct banking houses especially for the purpose of operating a bank in the form of a single building on a lot or tract more or less restricted in area to the measurements of the banking building itself. But I do not know of any instance where construction of a bank covering, say, one-half of the area of a platted fifty by one hundred forty foot lot has been questioned. There have been and are incidental uses of the vacant portions of business lots recognized by custom and it would seem that a bank might properly use any vacant areas of its premises for handling automobiles of its customers while the customers themselves are transacting business with the bank. On such vacant portions of the bank premises some improvements might

properly be made in the interests of the business. The extent of these improvements should be governed by the exercise of sound business judgement. It seems to me reasonable that, in areas where the operation of a thriving bank in the traditional manner is actually handicapped by congested automobile traffic and inadequate auto parking facilities, a state banking association could properly improve its situation by constructing on its premises both parking facilities and additional tellers' booths for the convenience of its customers. If, in the proper conduct of its operations, a bank requires vacant lots adjoining, cornering or near the original banking premises, it might very well be expedient and proper to make similar use of such lots.

At the present time there is a national bank in the city of Fargo which owns, in addition to the bank building premises proper, a particular vacant tract located northwest of the bank premises so that the west line of the lot occupied by the bank continues as the east line of the additional tract and the centerline of the east-west street on which both properties abut may be considered the north boundary of the bank lot and the south boundary of the additional tract, thus giving the two properties a common point at the center of the east-west street. The straight line distance from the northwest corner of the bank building to the southeast corner of a tellers' booth or hut proposed to be placed on the additional tract is less than one hundred fifty feet. There is to be telephone service and a direct communication system between the booth and the bank building, and it may be that the bank will arrange to install connecting pneumatic tubes or a tunnel.

Whether or not the use of cornering or contiguous additional property for bank purposes on either a temporary or permanent basis should be permitted North Dakota banks seems to me to be an administrative question rather than a problem of statutory interpretation under the provisions of our code. This office has studied several opinions and rulings to the effect that the installation and operation of outdoor tellers' booths on bank parking lots does not constitute branch banking within the meaning of statutory prohibitions of that practice. Those opinions and rulings for the most part approved situations where the additional banking facility was located directly across a street from or immediately adjacent to the property on which the principal banking house was located. It is my opinion that no statute of this state would be violated by the acquisition and operation by a bank of customer convenience facilities of the parking lot and outdoor tellers' booth type where the same are constructed adjacent or contiguous to the premises of the banking house as proposed by the national bank in Fargo to handle an actual business emergency, and that the acquisition, improvement and use of such facilities by North Dakota state banks would be a proper subject for inquiry and investigation by your department and by the State Banking Board under the supervisory powers you have. It may be that the board would want to consider adoption of a rule or regulation requiring that proposals for bank-owned parking lots or outdoor tellers' booths or both be submitted to it. Under the present statute, any investment in additional facilities of this kind which, together with the investment in the principal banking house and appurtenances, might exceed the amount of the capital stock of the bank, would have to be submitted to and acted upon by the State

Banking Board.

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