



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Lee Brady, Commissioner,  
Department of Banking  
Austin, Texas

Dear Mr. Brady:

Opinion No. O-2530

Re: Whether or not the Mid-Continent Bancshares, Inc., a foreign corporation, organized as a holding company, with respect to Morris Plan Bank shares is lawfully doing business in Texas, where it has acquired such shares in a Texas Morris Plan Bank, without having taken out a permit to do business in Texas, and related questions.

We beg to acknowledge receipt of your letter of July 10, 1940, propounding for a legal opinion the following questions:

"The San Antonio Morris Plan Bank was originally incorporated under Chapter 9 of the Banking Act as a Morris Plan Bank within the purview of that chapter. Subsequently it adopted the powers provided for under S. B. No. 266, and thereafter applied to the FDIC for insurance of its deposits pursuant to the laws of the United States.

"In connection with that application it developed that more than a majority of the stock of this bank is owned by Mid-Continent Bancshares, Inc. a foreign corporation, which corporation has no permit to do business in this State. This fact having come to light, the FDIC has requested that I submit to you the following questions:

Honorable Lee Brady - Page 2

"1. Is Mid-Continent Bancshares, Inc., a foreign corporation, lawfully doing business in this State?

"2. Are Mid-Continent Bancshares, Inc., and the San Antonio Morris Plan Bank, or either or both of them, exercising banking privileges in violation of Section 16, Article 16, of the Texas Constitution, or in violation of any other law of this State?

"In the light of the above facts, is the San Antonio Morris Plan Bank lawfully entitled to exercise the privileges as provided for under Chapter 9 of the Banking Act as amended by S. B. No. 268?"

The questions presented by you are the same as those stated in your request for an opinion of date June 26, 1940, and which we answered in our Opinion No. O-2484. We therefore answer as we did in that case, to-wit:

1. We express no opinion as to whether or not the Mid-Continent Bancshares, Inc. is lawfully doing business in the State of Texas. We do hold, however, that its activities, as disclosed by you, do not affect the status or rights of the Morris Plan Bank as a Texas corporation to carry on its corporate purposes and affairs.

2. This question should be answered in the negative as to both institutions -- the Mid-Continent Bancshares, Inc., and the Morris Plan Bank. In this connection it is pertinent to say the incorporation of the Morris Plan Bank should not be considered a subterfuge or scheme for the carrying on of the Mid-Continent Bancshares, Inc. business, for the business of the two corporations -- that is, the corporate purpose -- is not the same. The corporate business of the Morris Plan Bank is that of a banking corporation; whereas, the corporate business of the Mid-Continent (insofar as pertinent here) is that of a holding corporation.

Honorable Lee Brady - Page 3

Our reasons are fully set forth in the opinion referred to, a copy of which we hand you herewith.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

/s/  
Ocie Speer  
Assistant

OS-MR

Enclosure

APPROVED JUL 16, 1940  
/s/ Grover Sellers  
FIRST ASSISTANT  
ATTORNEY GENERAL

APPROVED  
OPINION COMMITTEE  
By /s/ B. W. B.  
Chairman