



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Jno. Q. McAdams
Commissioner
Department of Banking
Austin, Texas

Dear Mr. McAdams:

Opinion No. O-5708

Re: Construction of Article 2,
Chapter V of the Texas Banking
Code, 1943, with respect to
"other real estate" owned by
banks.

Your request for an opinion from this Department
upon the above subject matter is as follows:

* * *

"Article 2, Chapter 5 of the 1943 Bank-
ing Code is very definite in its requirement
that an annual 10% of the original book value
of such real estate be written off until the
figure is reduced to 25% of its original value.

"Many of our State banks have acquired
real estate designated as other real estate
on their records; such values are so desig-
nated to segregate them from ownership car-
ried and known as domicile, expressed in
banking parlance as banking house.

"We would like to know whether banks
which have acquired real estate before the
effective date of the 1943 Banking Code should
follow the provisions of Article 514 R. 5. or
those of Article 2 Chapter 5 of the 1943 Bank-
ing Code.

* * *"

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You are respectfully advised that banking institutions should follow Article 2, Chapter V, of the Texas Banking Code, 1943, rather than Article 514 of the Revised Civil Statutes of Texas in the matter of holding and disposing of real estate other than its banking house, regardless of the time of the acquisition of such "other real estate."

Article 514 of the Revised Civil Statutes is as follows:

"Banks and Bank and Trust Companies created under this Title shall own only such real estate as may be required for the transaction of their business, and such as they may acquire in the enforcement and collection of debts and liabilities due to them, which lands so acquired by any such corporation shall be alienated by it within five years after its acquisition; it shall not hold such property for a longer period unless it shall procure a certificate from the Banking Commissioner that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended from year to year as the Commissioner shall direct in such certificate, not to exceed an additional five years, but in no event shall a Bank or Bank and Trust Company own such real estate for a period longer than ten years; provided that any and all sales of real estate to officers, directors or stockholders of such Bank and Bank and Trust Company shall be made only upon the consent of a majority of such stockholders." (As amended in 1943)

Article 2 of Chapter V of the Texas Banking Code, 1943, is as follows:

"No state bank shall acquire real estate, other than its domicile, except in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the bank. No state bank shall assign an original book value to such real estate in excess of its reasonable value at the time of acquisition and such real estate shall be depreciated each year ten per

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(10%) of such original book value until charged down to twenty-five per cent (25%) of its original book value; provided that the Commissioner may permit a lesser percentage to be depreciated during any year."

Article 514 of the Revised Civil Statutes above quoted was a part of Chapter 3 of Title 16 of the Revised Civil Statutes. Article 11 of Chapter IX of the State Banking Code adopted by the 48th Legislature expressly repeals Title 16 of the Revised Civil Statutes of Texas, along with numerous other statutes and acts affecting banking, thereby making the Code complete within itself, and the exclusive statute with respect to banking institutions, the express provision of Article 1, Chapter I, declaring, "This Code provides a complete system of laws governing the organization, operation, supervision and liquidation of state banks."

So that, there is no statutory law in Texas upon such subject other than Article 2, Chapter V, of the State Banking Code, as above quoted.

No principle of vested rights is involved in your question, since banking institutions acquired no fixed or vested right, nor could they do so under the old statute, (Article 514) because that Article pertained to a regulation by the State, and, like statutory remedies to one, may be changed at the will of the State. Indeed, the statute did not confer a right on the bank at all, but on the contrary, it was a regulation operating as a burden on the banks.

Very truly yours

ATTORNEY GENERAL OF TEXAS

Gov. Adams By

Ocie Speer
Ocie Speer
Assistant

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