



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

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April 16, 1975

The Honorable Tom Creighton, Chairman  
Senate Committee on Economic Development  
State Capitol Building  
Austin, Texas 78711

Letter Advisory No. 96

Re: May drive-in facilities  
be connected to the main bank  
only by means of closed circuit  
TV?

Dear Senator Creighton:

In light of Senate Bill 642, you have requested our opinion concerning article 342-903, V. T. C. S., the Branch Banking Act. Specifically you ask whether the population classification of the current law violates the equal protection clause of the Fourteenth Amendment and the prohibition of article 3, section 56, Texas Constitution, against local and special laws; and secondly, whether closed circuit television as a means of connection between a drive-in facility and the main building may be constitutionally authorized.

Article 342-903 allows banks:

. . . in a county having a population of at least 350,000 according to the last preceding federal census, if authorized in the manner hereinafter provided, [to have] not more than one (1) automobile drive-in facility whose nearest boundary is located within one thousand eight hundred fifty (1,850) feet of the nearest wall of the central building but more than five hundred (500) feet therefrom and is connected to the central building by tunnel, passageway or hallway providing direct access between the central building and the connected automobile drive-in facility or by pneumatic tube or other similar carrier. The entire banking house shall for all purposes under the law be considered one integral banking house. The term 'automobile drive-in facility' as herein used shall mean a facility offering banking services solely to persons who arrive at such facility in an automobile and remain therein during the transaction of business with the bank.

When a statute classifies counties on the basis of population, it is valid only if the distinction is "based on a real and substantial difference that is reasonably related to differences in population." Attorney General Opinion H-393 (1974), H-8 (1973) and authorities cited therein. Whether a classification is reasonable in this sense is a question of fact and cannot be definitively resolved in an opinion of this office, except in the clearest of instances. See Attorney General Opinion H-8 (1973). However, since legislative acts are presumed to be constitutional, and since in our view there may exist reasonable distinctions between large and small counties which would support this classification (e. g., traffic and parking problems), we have no basis on which to find the classification unconstitutional.

Your second question pertains to Senate Bill 642, which would amend article 342-903 by deleting the population requirement, extending the permissible separation from 1850 to 2000 feet, and authorizing connection by means of closed circuit television. You ask whether connection by means of closed circuit television is constitutional. Article 16, section 16 of the Texas Constitution provides in part:

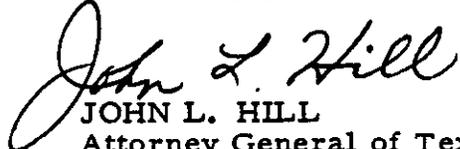
[Banks] shall not be authorized to engage in business at more than one place which shall be designated in its charter.

This question of a closed circuit television connection was involved in Attorney General Opinion M-849 (1971). In that opinion it was felt that there was insufficient case law construing section 16 to allow a dispositive answer. While the specific question raised has not been considered by the courts, Great Plains Life Insurance Co. v. First National Bank of Lubbock, 316 S. W. 2d 98 (Tex. Civ. App. -- Amarillo 1958, writ ref'd. n. r. e.), discussed both article 16, section 16 and article 342-903, V. T. C. S. That case involved a drive-in banking facility which was connected with the main bank by means of a pneumatic tube. The court stated:

. . . As we understand a branch bank it is a separate entity and deposits made in a branch bank are payable there and only there unless the branch bank be closed [or] demand for payment by the depositor be refused, then the demand for payment will be against the mother bank. Branch banks are not mere teller's windows, . . . the tellers of the drive in portion of the bank had [no] more authority than any of the tellers in the bank building proper. This drive in depository is nothing more than a part of the appellee bank. . . . We are of the opinion, and so hold, that these drive in teller's windows are a part of appellee bank and are not branch banks, and that appellee is not violating the Constitution nor the Banking Code of the State of Texas. (Emphasis added). 316 S. W. 2d at 104.

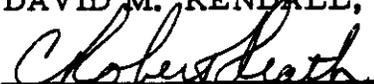
In our opinion article 16, section 16 was intended to prohibit branch banking, not drive-in teller facilities which are operated for the convenience of customers. See Attorney General Opinion V-1046 (1950). In the context of Senate Bill 642 and its limitation of the distance of separation, we can determine no meaningful distinction between a connection by pneumatic tube and one by closed circuit television cable. In both instances the bank's business is conducted in "one place" within the meaning of section 16, so long as the drive-in facility is limited to teller services. Great Plains Life Ins. Co., supra. Article 16, section 16 is therefore not violated by the operation of a drive-in facility which houses only tellers and is connected with the main building by closed circuit television cable.

Very truly yours,

  
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APPROVED:

  
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