



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

September 15, 2006

Interpretive Letter #1072
October 2006
12 USC 29

Re: Bank Premises Proposal

Dear []:

This is in response to your inquiry on behalf of [], [*City, State*] (“Bank”), concerning the authority of national banks to lease to a third party an existing parcel of bank premises property. For the reasons discussed below, we believe that the Bank’s proposal is permissible under 12 U.S.C. § 29 and is consistent with our precedent.

I. Background

The Bank owns a parcel of land in [*City, State*], as bank premises property (the “[] Premises”). The [] Premises covers 1.82 acres (approximately 79,000 square feet) and includes a 4,300 square foot free-standing bank branch, surface parking for bank customers and employees, and landscaping. The Bank has operated the full-service branch on the [] Premises since 1974, and the Bank represents that its current branch building, now over 30 years old, needs to be replaced.

Concurrent with its need for a new, modern branch building, the Bank proposes to make a more productive use of the [] Premises. Specifically, the Bank proposes to enter into a long-term ground lease with an unaffiliated, third-party developer for the [] Premises. On the parcel, the third-party lessee would construct a new full-service bank branch building for the Bank and sublease the building to the Bank at no cost. In addition, the third-party lessee would create surface parking for bank customers and employees. To maximize the utility of the overall parcel, the third-party lessee also would construct a facility with approximately 17,000 square feet of space that would house a limited number of retail businesses.¹ The Bank would receive annual, fixed lease payments from the third-party lessee.

¹ Neither the Bank nor its holding company or any of its affiliates would participate in the development, construction, financing, ownership, or operation of the retail space.

It is anticipated that the ground lease would run for 40 years. At the end of the term, if the lease is not renewed, title to all improvements made upon the [] Premises would revert to the Bank. Following the reconfiguration of the property, it is expected that approximately 50% of the [] Premises would be used by the Bank for its banking business.

The Bank believes that its proposal for the [] Premises would benefit the Bank in several ways. First, the Bank would have a new, modern, and more efficient branch facility, which would better position the Bank to compete with competitors entering the market. Second, the Bank would maximize the utility of the [] Premises, thereby generating lease income which would enhance the Bank's cash flow. Third, the presence of the retail businesses would generate more traffic to the location, from which the Bank may generate new business.

II. Discussion

A national bank's authority to own real estate is governed by 12 U.S.C. § 29. Section 29(First) provides that a national bank may purchase, hold, and convey such real estate "as shall be necessary for its accommodation in the transaction of its business." The limitations of section 29 are designed "to keep the capital of the banks flowing in the daily channel of commerce; to deter them from embarking in hazardous real estate speculations; and to prevent the accumulation of large masses of such property in their hands"² Consistent with section 29, the bank's activities must be conducted in good faith, that is, for banking purposes and not in an effort to avoid the limitations of section 29.³

For over three decades, the Bank has held the [] Premises and has used it in good faith for the accommodation of its banking business. Clearly, the [] Premises is permissible bank premises. Once a national bank has acquired a parcel in good faith for the legitimate business reason of accommodating its banking business, the bank may make the best economic use of the property consistent with the accommodation of its business. In *Brown v. Schleier*, 118 F. 981 (8th Cir. 1902), *aff'd*, 194 U.S. 18 (1904), the court stated:

If the land which [a national bank] purchases or leases for the accommodation of its business is very valuable, it should be accorded the same rights that belong to other landowners of improving it in a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive.

² *Union Nat'l Bank v. Matthews*, 98 U.S. 621, 626 (1878).

³ Interpretive Letter No. 1045, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-573 (December 5, 2005); Interpretive Letter No. 1044, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-572 (December 5, 2005); Interpretive Letter No. 1034, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-563 (April 1, 2005); Conditional Approval No. 298 (December 15, 1998); Interpretive Letter No. 758, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-122 (April 5, 1995); Interpretive Letter No. 1043, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-571 (July 8, 1993); Interpretive Letter No. 1042, *reprinted in* [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-570 (January 21, 1993).

There is nothing, we think, in the national bank act, when rightly construed, which precludes national bank, so long as they act in good faith, from pursuing the policy above outlined.

The basic requirement, therefore, is that the bank's activities must be conducted in good faith, that is, for banking purposes and not in an effort to violate 12 U.S.C. § 29. And, once land is owned appropriately by a national bank, better utilization thereof is also permissible under section 29.⁴ The *Brown* decision continued:

The [National Bank Act] ought not to be construed in such a way as to compel a national bank, when it acquires real property for a legitimate purpose, to deal with it otherwise than a prudent landowner would ordinarily deal with such property.

Brown, 118 F. at 984.

In Interpretive Letter No. 758, *supra*, the national bank owned as bank premises an expanse of parkland that it used for employee recreation and bank promotion. The bank inquired whether it could lease a portion of the bank premises to a third-party mining company for that company to remove granite deposits from the leased acreage. We concluded that the national bank could lease a portion of real estate held as bank premises to a third party so long as doing so did not impinge on the bank's use of the parcel for its banking business.

It is consistent with Section 29, therefore, to lease out portions of a real estate parcel owned by the bank and used in part for bank premises in order to obtain maximum return from the property. The law allows this use when the property remains undivided and assumes that ownership of the entire parcel is for the accommodation of the Bank's business.

The authority to make a better utilization of bank premises property is subject to the bank's continued good faith use of the premises for a legitimate business reason. Under the Bank's proposal, the Bank would continue to use the [] Premises in good faith for the accommodation of its banking business. It is expected that approximately 50% of the premises would be used by the Bank for its banking business.⁵ The Bank would maximize the utility of the [] Premises by permitting the lessee to construct a facility to house

⁴ *E.g.*, Interpretive Letter No. 1043, *supra*.

⁵ The OCC looks to the percentage of use or occupancy of property in conjunction with the bank's business as a measure of good faith use of the property for banking purposes. *See, e.g.*, Interpretive Letters No. 1045 and 1044, *supra*. The Bank's expected percentage use of the [] Premises exceeds what has been expressly permitted in the case law on bank premises. *See, e.g., Wingert v. First Nat'l Bank*, 175 F. 739 (4th Cir. 1909), *appeal dismissed*, 223 U.S. 670, 672 (1912) (upholding bank's authority to tear down bank building and construct new six story office building in which bank will occupy only first floor, or 16.7 percent of structure); *Wirtz v. First Nat'l Bank & Trust Co.*, 365 F.2d 641, 644 (10th Cir. 1966) (recognizing bank's authority to occupy 20.7 percent of office complex and lease remaining space as excess premises).

retail businesses on the remainder of the parcel. In doing so, the Bank's proposal also would benefit the Bank's business: a new, modern, more efficient branch facility would enable the Bank to compete more effectively with new competitors entering the market; more foot traffic to the location would offer the Bank the opportunity to generate new customers and more business; and the lease itself would generate a stream of lease income to the Bank.

Moreover, the Bank's proposal is not inconsistent with purposes behind restrictions in section 29.⁶ The Bank already owns the [] Premises, so it would not have to expend funds to acquire the property. Because the Bank only would lease the property to a third party, the Bank would not expend funds to develop or construct the retail space. Thus, no additional capital is removed from the daily flows in the channels of commerce, and capital (in an amount equal to annual lease income) is returned to the channels of commerce. The Bank already owns the [] Premises and would enter into a long-term lease with fixed lease payments, so the Bank could not be said to be speculating in real estate. Because the Bank already owns the parcel, it would not acquire any additional real estate; thus, it would not be accumulating large masses of real estate. Finally, the Bank's proposal would not result in the Bank's holding any real estate other than the [] Premises and, because banks are permitted to hold bank premises indefinitely, the Bank could not be said to be holding any impermissible (*i.e.*, non-premises) real estate in mortmain.

III. Conclusion

Based upon the information and representations you provided, we find that the Bank's proposal is permissible under 12 U.S.C. § 29 and is consistent with our precedent. A material change in the facts may result in a different conclusion. If you have any questions, please contact Steven V. Key, Counsel, Bank Activities and Structure Division, at 202-874-5300.

Sincerely,

/s/

Julie L. Williams
First Senior Deputy Comptroller
and Chief Counsel

⁶ See footnote 2 and accompanying text.