



Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-48

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**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS OF
UNION PLANTERS BANK, N.A., WEST MEMPHIS, ARKANSAS,
AND UNION PLANTERS NATIONAL BANK, MEMPHIS, TENNESSEE
August 28, 1996**

I. INTRODUCTION

On June 27, 1996, Union Planters Bank, National Association, West Memphis, Arkansas ("UPB") (formerly named First National Bank in West Memphis) filed an application with the Office of the Comptroller of the Currency ("OCC") for approval to change the location of its main office from West Memphis, Arkansas, to Memphis, Tennessee, under 12 U.S.C. 30 (the "Relocation Application"). The location in Memphis is approximately 16 miles from West Memphis. After the relocation of its main office, UPB would retain its existing branches in Arkansas. UPB also applied to the OCC for approval, following the relocation of its main office, to establish a new branch at the former location of its main office in West Memphis under 12 U.S.C. 36(c) (the "Branch Application").

On June 27, 1996, an Application was also made to the OCC for approval, after the relocation and branch establishment, to merge UPB with and into Union Planters National Bank, Memphis, Tennessee ("UPNB"), under 12 U.S.C. 215a & 1828(c) (the "Merger Application"), under the charter and title of the latter ("UPNB-Resulting" or the "Resulting Bank"). In the Merger Application, OCC approval is also requested for the resulting bank to retain the branches of both merging banks in Arkansas and Tennessee, as branches after the merger under 12 U.S.C. 36(b).

Both UPB and UPNB are subsidiaries of Union Planters Corporation ("UPC"), a multistate bank holding company with its headquarters in Memphis, Tennessee. As of March 31, 1996, UPB had approximately \$223 million in assets and \$190 million in deposits and operated 14 branch offices in Arkansas, and UPNB had approximately \$2.1 billion in assets and \$1.3 billion in deposits and operated 36 branch offices in Tennessee. In these Applications, banking offices of two of UPC's subsidiary banks in portions of Arkansas and Tennessee that are part of the greater Memphis area or nearby will become offices of one bank. These Applications are part of a larger planned reorganization in which one bank will serve all three states in the Memphis area. In a previous stage, two other banks in eastern Arkansas owned by UPC were merged into First National Bank in West Memphis to form UPB. <NOTE: In the earlier series of transactions, three banks owned by Union Planters Corporation (Union Planters Bank of East Arkansas, Earle, Arkansas, a state-chartered nonmember bank, First National Bank in Osceola, Osceola, Arkansas, and First National Bank in West Memphis) were merged under the First National Bank in West Memphis charter to form UPB. In addition, the transactions included mergers to eliminate two intermediate holding companies. Different parts of the earlier series of transactions

required approvals from the OCC, the Arkansas State Bank Department, the Federal Reserve System, and the Federal Deposit Insurance Corporation. All required approvals were obtained, and the transactions were completed on May 1, 1996. As a result of these transactions, UPB has the following offices in Arkansas: its main office and six branches in Crittenden County, four branches in Mississippi County, two branches in St. Francis County, one branch in Woodruff County, and one branch in Prairie County.> In a separate application pending at the OCC that also includes a merger with an affiliated federal savings bank, branches in the Mississippi portion of the greater Memphis market would be transferred from two of UPC's subsidiary banks in Mississippi to UPNB.

UPB, UPNB, and UPC hope to improve customer service and to operate more efficiently in the Memphis area by having all of UPC's banking offices in the area operate as branches of one bank. Among the benefits which are expected to be realized are the following: (1) customers who work in one state but live in another, and other customers who cross state lines, will be able to deal with branches of the same bank; (2) businesses with operations in more than one of the states also will be able to deal with branches of the same bank; (3) all of UPC's banking offices in this area would operate under the same corporate entity, with the same corporate name; (4) the potential for customer confusion arising from transactions with affiliated banks (but separate corporate entities) would be eliminated; (5) the efficiencies of local advertising and other public relations programs would be significantly improved by having to promote one bank rather than several in the same market; (6) data processing systems and operating procedures could be standardized and greatly simplified and improved; and (7) the expense of maintaining separate corporate entities would be eliminated.

Notice of the Applications was published in a general circulation newspaper serving Memphis, West Memphis, and the surrounding area beginning on June 27, 1996. Two comment letters were received. One letter, dated July 5, 1996, from the Mid-South Peace and Justice Center raised fair lending and community reinvestment allegations regarding UPNB. That letter is discussed on page 56. The Applicants responded in a letter dated July 18, 1996.

On July 24, 1996, the Commissioner of the Arkansas State Bank Department wrote the OCC to object to the Applications and urge that they be denied. The Arkansas Commissioner's letter enclosed a memorandum outlining the Commissioner's objections to the Applications. The memorandum included exhibits, particularly a copy of the amicus brief submitted by the Conference of State Bank Supervisors and several individual state banking departments ("CSBS brief") in a lawsuit brought by the Texas Bank Commissioner challenging an earlier interstate main office relocation from Arkansas into Texas. The Arkansas Commissioner also cited the district court's Findings of Fact and Conclusions of Law in that case. *See Ghiglieri v. Ludwig*, No. 3:95-CV-2001-H, 1996 U.S. Dist. LEXIS 8321 (N.D. Tex., May 22, 1996), *appeal docketed*, No. 96-10818 (5th Cir. July 10, 1996) ("*Ghiglieri*"). <NOTE:The *Ghiglieri* court was reviewing the OCC's Decision on the Applications of Commercial National Bank of Texarkana (OCC Corporate Decision No. 95-11, March 8, 1995) ("*OCC Commercial National Bank Decision*").> In that case, the district court concluded that the OCC's interpretation of 12 U.S.C. 30 & 36 as permitting a national bank to keep its existing branches when it relocates its main office across state lines was erroneous. The OCC believes the district court opinion in *Ghiglieri* is incorrect as a matter of law for several reasons. Most significantly, the court did not follow the language of the statutes in effect at the time of the OCC's decision and ignored highly relevant recent legislative history which illuminates the literal language of sections 30 and 36. In addition, the court failed to follow the standards set by the United States Supreme Court for judicial review of an agency's construction of the statutes it administers. *See NationsBank of North Carolina, N.A. v. Variable Annuity Life Insurance Co.*, 513 U.S. __ (1995); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). These standards were recently, emphatically, re-affirmed by the High Court in a decision handed down subsequent to the district court's opinion. *See*

Smiley v. Citibank (South Dakota), N.A., No. 95-860, 517 U.S. ___, 135 L.Ed.2d 25 (June 3, 1996). The district court opinion is discussed at pages 12-13, 22, 23-34, 38 and 52.

The Commissioner's primary objection is to the Relocation Application, specifically to UPB's retention of its existing branches in Arkansas when it relocates its main office from Arkansas to Tennessee. The Commissioner asserts this would violate federal and Arkansas law. The Arkansas Commissioner adopts and incorporates the CSBS brief and the *Ghiglieri* decision as part of his objection. Thus, we refer to material from all these sources as the Commissioner's objections. The Commissioner argues (1) there is no authority to retain existing branches under section 30, instead branches are governed exclusively by section 36 (the McFadden Act), and the proposed retention of the Arkansas branches violates section 36; and (2) the creation of an interstate bank by such branch retention under section 30 is inconsistent with the interstate branching framework created in recent federal interstate branching legislation. These objections are addressed in the relevant portions of the discussion below (especially at pages 23-34).

With respect to the Branch Application and the Merger Application, the Commissioner asserts that, without the retention of the pre-existing Arkansas branches in the Relocation Application, there is no legal authority for establishing the new branch in Arkansas in the Branch Application or for retaining the branches in Arkansas in the Merger Application. The Commissioner also argues the establishment of the new branch violates section 36(c) because the Commissioner asserts Arkansas branching law authorizes only banks whose main offices are in Arkansas to establish branches in Arkansas. These objections are addressed at pages 38-39 (branch) and 46 (merger). Additional aspects of the Commissioner's assertion that the proposed Applications would violate state law are discussed at pages 49-54. The Applicants responded to the Commissioner's objections by letter dated August 5, 1996.

II. LEGAL AUTHORITY

These Applications involve a series of three transactions:

- (1) The relocation of a national bank's main office from Arkansas into Tennessee, and the bank's retention of its existing branches in Arkansas, under 12 U.S.C. 30.
- (2) The relocated bank's establishment of a new branch at the former site of its main office in Arkansas, under 12 U.S.C. 36(c).
- (3) The merger of the relocated bank with another national bank in Tennessee, and the resulting bank's retention of the branches of both banks, under 12 U.S.C. 215a (merger) & 36(b)(2) (branches).

This business combination presents but one central legal issue: the power of a national bank to retain its existing branches when it moves its main office. The interstate relocation of the main office in itself is well-established, as set out at pages 7-13. If the branch retention in the relocation is authorized, then UPB can become an interstate national bank (*i.e.*, a bank with branches in another state). Then, in the second and third transactions, the statutes governing the establishment of new branches by national banks and mergers of national banks are simply applied to the interstate bank. But, without the branch retention in the relocation transaction, there is no basis to proceed to the second and third transactions.

Thus, the central legal issue is a national bank's power to retain its existing branches in an interstate relocation of its main office. In 1994, Congress addressed this very issue and confirmed the OCC's prior interpretation of the statutes. In two decisions in early 1994, the OCC determined that the bank could continue to operate its existing branches in its original state when it relocated its main office to another

state under section 30, without regard to section 36 or state law. <NOTE: See Decision on the Applications of American Security Bank, N.A., Washington, D.C., and Maryland National Bank, Baltimore, Maryland (OCC Corporate Decision No. 94-05, February 4, 1994), *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,695 ("*OCC NationsBank/Maryland National Decision*"); Decision on the Applications of First Fidelity Bank, N.A., Pennsylvania, Philadelphia, Pennsylvania, and First Fidelity Bank, N.A., New Jersey, Newark, New Jersey (OCC Corporate Decision No. 94-04, January 10, 1994), *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) 89,644 ("*OCC First Fidelity/New Jersey Decision*"). There were also other decisions before the Riegle-Neal Act that involved only the interstate relocation of a bank's main office (*i.e.*, the bank did not have branches to retain). See Decision on the Applications of the First National Bank of Polk County (OCC Corporate Decision No. 94-21, April 28, 1994) (relocation from Tennessee into Georgia); Decision on the Application of the First National Bank of Spokane (1991) (relocation from Washington into Idaho); Decision on the Application of SouthTrust National Bank (1989) (relocation from Alabama into Georgia); Decision on the Application of the Bank of New Jersey, N.A. (1986) (relocation from New Jersey into Pennsylvania) ("*OCC Bank of New Jersey Decision*"); Decision on the Application of Mark Twain Bank, N.A. (1985) (relocation from Missouri into Kansas) ("*OCC Mark Twain Decision*").> We based this statutory conclusion on consideration of many factors, including an extensive review of the statutes, legislative history, caselaw, the development of the statutes, and the impact of branch retention *vel non* on the exercise of the primary statutory right to move the main office. We found nothing that required existing branches to be divested in a main office relocation, and concluded a congressional intent to require such divestiture could not be inferred from silence. The OCC's statutory construction of section 30 before the Riegle-Neal Act is summarized at pages 14-17.

In the Riegle-Neal Act, Congress visited section 30 after the earlier OCC decisions and added new language to 12 U.S.C. 30 & 36 to clarify and govern the power of national banks to have interstate branches through retaining existing branches in an interstate main office relocation. See Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (the "Riegle-Neal Act"). This action recognized that, under section 30, national banks had such power before, and then limited it, beginning on June 1, 1997, to co-ordinate the section 30 power with the new Riegle-Neal framework for interstate branches. Section 30, as so amended, is the statute that applies to transactions today. Before the Riegle-Neal Act, nothing in sections 30 or 36 required the constructive divestiture of existing lawful branches in a main office relocation. In the Riegle-Neal Act, Congress added such a requirement, but only for certain interstate relocations and only to begin on June 1, 1997. Congressional action on section 30 in the context of the prior OCC interpretation is especially compelling. Thus, in the relocation of its main office from one state to another, the power of a national bank to retain its existing branches under section 30 is now clearly established. Section 30 and the Riegle-Neal Act are discussed at pages 17-34.

Once UPB is an interstate national bank, the branch transaction and the merger transaction then are evaluated under the statutes, cases, and prior OCC decisions for such transactions by an interstate bank. Before the Riegle-Neal Act, there had been a number of decisions applying the applicable federal branching and merger statutes to transactions by interstate national banks. <NOTE: The *OCC First Fidelity/New Jersey Decision* and the *OCC NationsBank/Maryland National Decision* had involved such transactions after the relocation, and there were also several other applications that did not involve a relocation but did involve interstate merger and branching transactions. See Decision on the Application to Merge Girard Bank, Bala Cynwyd, Pennsylvania, into Heritage Bank, N.A., Jamesburg, New Jersey, with the Title of Mellon Bank (East) N.A. (March 27, 1984), *reprinted in* [1983-84 Transfer Binder] Fed. Banking L. Rep. (CCH) 99,925 ("*OCC Mellon Decision*") (in 1984 Heritage had a grandfathered branch in Philadelphia; the 1984 transaction was not consummated and Heritage later became part of Midlantic National Bank); Decision on the Application of State Savings Bank, Southington, Connecticut, to Convert into a National Banking Association, State Savings Bank, N.A., and Merge into Connecticut National Bank, Hartford, Connecticut (OCC Merger Decision No. 91-07, April 8, 1991), *available in* 1991 OCC Ltr. LEXIS 73 ("*OCC Shawmut Decision*") (both banks owned by Shawmut National Corporation; at the time of conversion State Savings Bank had

branches in Rhode Island); Decision on the Application for the Merger of First Peoples National Bank, Kingston, Pennsylvania, with and into First Fidelity Bank, N.A., Salem, New Jersey (OCC Corporate Decision No. 94-07, February 23, 1994) ("*OCC First Peoples Decision*"); Decision on the Applications to Merge NationsBank of D.C., N.A., Maryland National Bank, and NationsBank of Maryland, N.A. (OCC Corporate Decision No. 94-22, April 29, 1994) ("*OCC NationsBank/D.C.-Maryland Decision*"); Decision on the Application for the Merger of Continental Bank, Norristown, Pennsylvania, into Midlantic National Bank, Newark, New Jersey (OCC Corporate Decision No. 94-37, August 12, 1994) ("*OCC Midlantic Decision*").> In the pre-Riegle-Neal decisions, the OCC determined that, when the federal statutes refer to state law, they were intended to apply state laws on a state-by-state basis for transactions in each state by an interstate national bank. That is, an interstate bank could establish new branches within each state under section 36(c), or could merge with another bank in each state and retain branches under sections 215a and 36(b), depending upon that state's law for in-state branching for its own state-chartered banks. In the Riegle-Neal Act, Congress left these statutes unchanged, after this OCC interpretation, and, in the new Riegle-Neal interstate provisions, adopted a similar state-by-state framework for subsequent transactions by a Riegle-Neal interstate bank. The branch and merger transactions are discussed at pages 34-39 and 39-49, respectively.

Since passage of the Riegle-Neal Act, the OCC has applied these statutes in the foregoing manner in many applications, including decisions in October 1994 shortly after the enactment of the Riegle-Neal Act. In particular, in one decision, a state bank commissioner objected to the transaction, arguing that the maintenance of interstate branches in the state would violate a state law and also raising interpretive questions under the Riegle-Neal Act. <NOTE: See Decision of the Office of the Comptroller of the Currency on the Applications of Bank Midwest of Kansas, N.A., and Bank Midwest, N.A. (OCC Corporate Decision No. 95-05, February 16, 1995), reprinted in Fed. Banking L. Rep. (CCH) 90,474 ("*OCC Bank Midwest Decision*"). Other decisions after the Riegle-Neal Act include: Decision on the Applications of National Westminster Bank USA and National Westminster Bank NJ (OCC Corporate Decision No. 94-43, October 20, 1994) ("*OCC NatWest Decision*"); Decision on the Applications of First Fidelity Bank, N.A., and The Bank of Baltimore (OCC Corporate Decision No. 94-47, November 4, 1994) ("*OCC First Fidelity/Baltimore Decision*"); Decision on the Application to Merge Chase Savings Bank into The Chase Manhattan Bank, N.A. (OCC Corporate Decision No. 95-08, February 10, 1995) ("*OCC Chase Decision*"); Decision on the Applications of American National Bank and Trust Company of Wisconsin and American National Bank and Trust Company of Chicago (OCC Corporate Decision No. 95-12, March 8, 1995); Decision on the Applications of PNC Bank, Northern Kentucky, N.A. and PNC Bank, Ohio, N.A. (OCC Corporate Decision No. 95-13, March 14, 1995) ("*OCC PNC/Kentucky Decision*"); Decision on the Applications of Firststar Bank Quad Cities, N.A., and Firststar Bank Davenport, N.A. (OCC Corporate Decision No. 95-16, April 27, 1995); Decision on the Application to Merge Bank and Trust Company of Old York Road into Midlantic Bank, N.A. (OCC Corporate Decision No. 95-18, May 25, 1995) ("*OCC Midlantic/Old York Decision*"); Decision on the Applications of BayBank Connecticut, N.A. and BayBank Boston, N.A. (OCC Corporate Decision No. 95-34, July 26, 1995) ("*OCC BayBanks/Connecticut Decision*"); Decision on the Applications of PNC Bank, New Jersey, N.A. and PNC Bank, N.A. (OCC Corporate Decision No. 95-36, August 7, 1995); Decision on the Applications of Fleet National Bank, Providence, Rhode Island, et al. (OCC Corporate Decision No. 96-17, March 27, 1996) ("*OCC Fleet Decision*").> In that decision, because of the issues raised by the objection, we revisited our analysis of pre-Riegle-Neal law and considered the impact of the Riegle-Neal Act on existing authority and the applicability of state law.

Therefore, these Applications by UPB and UPNB are similar to a number of prior interstate relocation, merger, and branching applications approved by the OCC. Indeed, the objections raised to these Applications by the Arkansas Bank Commissioner are similar to those raised by the Kansas Bank Commissioner in the *OCC Bank Midwest Decision*. The legal analysis and authorities set forth in the prior decisions, especially the *OCC Bank Midwest Decision*, the *OCC NationsBank/Maryland National Decision*, and the *OCC First Fidelity/New Jersey Decision*, also apply here.

A. UPB may Relocate its Main Office to Memphis, Tennessee, and Continue to Operate its Existing Branches in Arkansas, under 12 U.S.C. 30.

In the Relocation Application, UPB applied to change the location of its main office from West Memphis, Arkansas, to Memphis, Tennessee, a distance of approximately 16 miles. UPB will keep and continue to operate its existing branches in Arkansas. Thus, after the relocation, UPB will be an interstate national bank operating in two states, with its main office in Tennessee and branches in Arkansas.

1. The Interstate Relocation of UPB's Main Office to Memphis is Authorized.

The relocation of UPB's main office is legally authorized under 12 U.S.C. 30. Section 30 authorizes a national bank to change the location of its main office to any location within 30 miles of the limits of the city in which its main office is located. 12 U.S.C. 30(b). Such a relocation, even across state lines, is authorized by the literal language of the statute, and nothing in the legislative history gives any reason not to adhere to the literal language. Section 30 operates independently of section 36, and the authority to relocate a main office is not limited by the McFadden Act. Thus, a main office relocation can result in a national bank having an office at a location where it would not be authorized to establish a branch. Finally, section 30 preempts state laws that conflict with the authority it confers on national banks.

The authority of a national bank to relocate its main office is set out in 12 U.S.C. 30(b), which provides:

Any national banking association, upon written notice to the Comptroller of the Currency, may change the location of its main office to any authorized branch location within the limits of the city, town, or village in which it is situated, or, with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, *to any other location within or outside the limits of the city, town, or village in which it is located, but not more than thirty miles beyond such limits.*

12 U.S.C. 30(b) (emphasis added).

Statutory interpretation begins with the language of the statute itself, which must be interpreted in accordance with its plain meaning. *See Lewis v. United States*, 445 U.S. 55, 60 (1980). "Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). A fundamental canon of statutory construction is that, when a statute's language is clear and unambiguous, the plain meaning of the statute must be applied. *See, e.g., Caminetti v. United States*, 242 U.S. 470, 485 (1917); *Higgins v. Marshall*, 584 F.2d 1035, 1037 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 931 (1979). *See generally* 2A *Sutherland Statutes and Statutory Construction* 46.01 (5th ed. 1992). The OCC, as the agency charged with administering the statute, is bound no less than courts by this canon of construction. "If the statute is clear and unambiguous, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Board of Governors of the Federal Reserve System v. Dimension Financial Corp.*, 474 U.S. 361, 368 (1986) (quoting *Chevron USA Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984)). Moreover, the legislative history of section 30 provides no basis for departing from the plain meaning of the statute. *See OCC Bank Midwest Decision* (Part II-A-1-b) (review of legislative history of section 30 from enactment in 1886 through 1959 amendment that removed language limiting relocations to places within the same state to 1982 amendment that was the last change prior to the Riegle-Neal Act).

Under the "plain meaning" rule of statutory construction, then, section 30 clearly permits a national bank to relocate its main office to any location within 30 miles. *See State of Idaho Department of Finance v. Clarke*, 994 F.2d 1441, 1444 (9th Cir. 1993) (interstate relocation); *Synovus Financial Corporation v. Board of Governors of the Federal Reserve System*, 952 F.2d 426, 428 & n.1, 435 (D.C. Cir. 1991)

(interstate relocation); *McEnteer v. Clarke*, 644 F.Supp. 290, 292 (E.D. Pa. 1986) (interstate relocation). *See also Ramapo Bank v. Camp*, 425 F.2d 333, 344 (3d Cir.), *cert. denied*, 400 U.S. 828 (1970) (in-state relocation). The plain language in section 30 authorizes a national bank to relocate its statutory "main office" to "any other location" within thirty miles of the limits of the city in which the main office is currently located. This authorization for relocations within 30 miles contains no limitation or other references to state borders or to state law. In the Relocation Application, the proposed main office location in Memphis, Tennessee, is approximately 16 miles from West Memphis. Thus, on its face, section 30 authorizes the proposed main office relocation.