



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

April 1, 2005

Interpretive Letter #1034
July 2005
12 USC 29

Re: Request for Legal Opinion

Dear []:

This is in response to your inquiry, on behalf of [] (“Bank”), concerning the authority of national banks to lease excess space in their bank premises. For the reasons discussed below, we believe that the Bank’s new bank complex qualifies as bank premises and that the Bank may lease the remaining space in the complex as excess bank premises.

I. Background

The Bank currently owns two contiguous lots (“Bank Property”) totaling approximately 21,000 square feet in the [] neighborhood of [*City, State*].¹ A one-story branch building is situated on one of the lots, with a surface parking lot used by bank customers and employees on the other lot. The Bank, or one of its predecessor banks, has maintained a branch on the Bank Property since 1973. The current branch building is an older facility and provides less than 3,000 square feet of office space, an amount that is not sufficient for the Bank’s current branch needs.

The Bank is the third largest bank in the [*City*] metropolitan area as measured by deposit market share. The Bank has over 90 branch and office facilities in the [*City*] metropolitan area. Maintaining a presence in the redeveloping [] neighborhood is critical for the Bank.

¹ The [] neighborhood, part of greater downtown [*City*], is undergoing extensive redevelopment. A new light rail route will run down one of the streets bordering the lots. Development of the light rail route has resulted in the condemnation of all of the buildings across the street from the Bank Property. As a result, office and retail space is at a premium in this area of [*City*].

The Bank represents that it has investigated moving its branch and has determined that there are no adequate facilities in the neighborhood due to the planned condemnation for the light rail route. The Bank further represents that constructing a new facility on the Bank Property is the most cost-effective option for the Bank to remain in this neighborhood.

The Bank proposes to invest in a bank premises corporation (“Premises Corporation”) and would enter into a long-term ground lease with the Premises Corporation. The Premises Corporation would demolish the existing branch building and construct the new bank complex. The bank complex will consist of two buildings, ground-level covered parking, and an underground parking facility shared by the two buildings. Upon completion of the construction, the Bank will lease space in the new complex from the Premises Corporation for its branch and other bank operations. The Bank will utilize approximately 22 percent of the total space (including parking) in the complex.

As the Bank’s facilities needs in the [*City*] metro area change, the Bank’s usage of space in the complex may change. The space leased for the Bank’s branch and the parking spaces would remain unchanged, however, and as a result, the Bank would then utilize approximately 11 percent of the total space in the complex.

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 However, section 29 does not prohibit a national bank from owning or leasing premises larger than its current needs dictate.³

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 29.⁴ Once a national

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

³ *See Brown v. Schleier*, 118 F. 981, 984 (8th Cir. 1902), *aff’d*, 194 U.S. 18 (1904) (noting that the National Bank Act does not preclude a national bank, acting in good faith, from maximizing the utility of its banking premises by leasing excess bank premises).

⁴ The Bank is authorized to invest in bank premises under 12 U.S.C. § 371d and 12 C.F.R. § 5.37. The Bank represents that, pursuant to the statute and regulation, it does not need to file an application or notice with the OCC because its aggregate investment in bank premises (including indebtedness incurred by any bank premises corporation that is an affiliate of the bank) does not exceed the amount of the Bank’s capital stock and surplus. *See* 12 U.S.C. § 371d(a)(2) and 12 C.F.R. § 5.37(d)(1). As of December 31, 2004, the Bank’s aggregate investment in bank premises was approximately \$1.8 billion, and the Bank’s capital and surplus was approximately \$11.8 billion.

bank owns property for its own use, both the courts and the OCC have recognized that the bank may maximize the utility of its banking premises by leasing excess space in its premises.⁵ The court, in *Brown v. Schleier*, *supra*, at 983-84, observed in pertinent part:

Nor do we perceive any reason why a national bank, when it purchases or leases property for the erection of a banking house should be compelled to use it exclusively for banking purposes. If the land which it purchases or leases for the accommodation of its business is very valuable, it should be accorded the same rights that belong to other land owners 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. There is nothing, we think, in the national bank act, when rightly construed, which precludes national banks, so long as they act in good faith, from pursuing the policy above outlined.

Once the bank complex is completed, the Bank will utilize approximately 22 percent of the bank complex for its banking business. This level of usage 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). Therefore, under these circumstances, we find that the Bank may lease the excess premises to other entities in order to maximize the utility of its premises.

The Bank has indicated that at some future time it may decide to sublease or terminate its lease for the office space in the complex to be used by its non-branch personnel. If that happens, the Bank would utilize approximately 11 percent of the total space in the complex. Although the case law and OCC precedent have found specific percentages of usage to be permissible under section 29, neither have established a required minimum percentage of utilization in order to qualify property as bank premises. Under the circumstances described here, we believe such reduced usage would not change the permissibility of the Bank's investment.⁶

III. Conclusion

Based upon the information and representations you provided, we find that the Bank may utilize the above stated percentages of the new bank complex and lease the remaining space as

⁵ *See, e.g., Brown*; Interpretive Letter No. 758 (Apr. 5, 1996), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-122 (authorizing national bank holding parkland as bank premises to lease a portion of the parkland to third-party).

⁶ Before the Bank may reduce its usage at the new complex to the level discussed above, however, the Bank must obtain the supervisory non-objection of its EIC.

excess bank premises. If you have any questions, please contact Steven V. Key, Senior Attorney, Bank Activities and Structure Division, at 202-874-5300.

Sincerely,

signed

Daniel P. Stipano
Acting Chief Counsel