

Fall 1984

Branch Banking in Missouri: Past, Present, and Future

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COMMENT

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I. INTRODUCTION

One of the most controversial issues facing the banking industry today is the issue of branch banking. While large financial institutions lobby for wide-open interstate competition, small rural banks oppose intrastate branching on even a modest scale. Of course, Missouri banks are not immune to the controversy. Small Missouri banks warn that less stringent branching policies would result in increased concentration of banking assets, a reduction in competition, and service that is unresponsive to the needs of Missouri's largely rural population. Larger banks, on the other hand, argue that branching would actually increase competition and provide better, more advanced, banking services currently not offered by most of the state's smaller banks. These large financial institutions, however, disagree among themselves on the issue of interstate bank holding company operations, citing the same arguments which are advanced by the proponents and opponents of intrastate branching.

Missouri historically has been a leader in the field of branch banking. In fact, it was an early Missouri case¹ that first held that nationally-chartered banks were subject to the branching laws of the various states. Today, Missouri has been targeted by the nation's largest financial institutions as a lead state for interstate banking legislation.² This comment will outline the history of branch banking in Missouri, and analyze the relevant issues concerning the future of branching within the state.

1. First Nat'l Bank v. Missouri, 263 U.S. 640 (1924); *see infra* text accompanying notes 89-103.

2. *See infra* text accompanying notes 192-204.

II. REVIEW OF FEDERAL BANKING LAW

It is impossible to understand fully the nature of the state branching question without an understanding of federal banking law, which overlays all banking law. Likewise, it is impossible to appreciate fully current federal banking law without some understanding of its history.

In 1791, the first Bank of the United States was chartered under the newly-enacted Constitution despite intense opposition.³ By 1811, those who had opposed the Bank's creation had come into power, and its charter was allowed to expire.⁴ In 1816, Congress chartered the second Bank of the United States, which, like the first Bank, was attacked on constitutional grounds. The Supreme Court affirmed its constitutionality in 1819⁵ and again in 1824,⁶ but the Bank remained the topic of much debate. In 1836, a bill to extend the Bank's charter was vetoed by President Jackson,⁷ and the United States was without a central, government-owned bank.

After 1836, jurisdiction over banking was left entirely to the states.⁸ Then, pushed by the need to finance the Civil War,⁹ Congress enacted the National Bank Act of 1864,¹⁰ which established privately-owned, but federally-chartered and regulated banks. The Act allowed, but did not require, state banks to renounce their state charters and join the federal system.¹¹ Not all chose to do so, however, and thus, a dual banking system was created.¹²

3. J. GILBART, *THE HISTORY OF BANKING IN AMERICA* 5-8 (1837); J. KNOX, *HISTORY OF BANKING IN THE UNITED STATES* 37-38 (1900).

4. J. GILBART, *supra* note 3, at 7.

5. *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 415 (1819). The Court held that Congress is authorized, under a proper construction of the necessary and proper clause of the constitution, to charter a bank; that creation of a bank is a reasonable means by which to exercise the congressional power to tax, borrow, and regulate commerce; and that the term "necessary" in the necessary and proper clause does not mean "indispensable." *Id.* at 418-32.

6. *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 251 (1824). The Court held that Congress had the power, under the constitution, to give the Bank of the United States the right to sue in the courts of the United States. *Id.* at 260.

7. J. KNOX, *supra* note 3, at 69.

8. H. WALLGREN, *PRINCIPLES OF BANK OPERATIONS* 323-24 (1976); 1 *FED. BANKING L. REP. (CCH)* 1102-1104.

9. H. WALLGREN, *supra* note 8, at 325.

10. National Bank Act, ch. 106, 13 Stat. 99 (1864) (codified in various sections of 12 U.S.C.).

11. 12 U.S.C. § 35 (1982).

12. H. WALLGREN, *supra* note 8, at 326. Under the dual system, organizers of a bank may choose to acquire a state or federal charter. A bank with a state charter operates subject to the state's laws on banking, and is supervised by the state's banking authorities. It is governed by federal law only if it also chooses to become a member of the Federal Reserve System. A bank with a federal charter is supervised by the Comptroller of the Currency, and is subject to state law only in those areas, such as branching, which Congress has left to the states. 1 W. SCHLICHTING, T. RICE & J. COOPER, *BANKING LAW* § 2.03 (1981).

Between 1863 and 1907 banking reform was of little interest outside of the large money centers. The panic of 1907, however, raised the subject to a matter of national political concern.¹³ The need for some type of central banking system was recognized, and Congress eventually settled upon the Federal Reserve Act of 1913.¹⁴ Among other things, the Act required state banks which joined the Federal Reserve System to conform to the same capital requirements of national banks, and set uniform reserves to be maintained by both state- and national-member banks.¹⁵ Thus, to the extent that state banks joined the Federal Reserve System, their operations were brought within the control of federal regulation.

Under the dual banking system, national banks were faced with several disadvantages vis-a-vis state banks. One disadvantage was that while states were free to authorize branch banking by state banks, national banks were prohibited from branching.¹⁶ Because many states began easing their restrictions on branch banking, concern over this competitive inequality between state and national banks began to grow.¹⁷ The result was the passage, in 1927, of the McFadden Act,¹⁸ which authorized branch banking by national banks

13. E. WHITE, *THE REGULATION AND REFORM OF THE AMERICAN BANKING SYSTEM 1900-1929*, at 63 (1983).

14. The Federal Reserve Act, ch. 6, 38 Stat. 251 (1913) (codified as amended at 12 U.S.C. (1982)). Today the Federal Reserve System is composed of five parts: The Board of Governors, the twelve Federal Reserve Banks, the Federal Open Market Committee, the Federal Advisory Committee, and the Member Banks. The Board of Governors supervises the entire system, with the objective of maintaining a sound banking system and an adequate supply of credit for the economy. The primary tool of the Board of Governors in meeting this objective is the Federal Open Market Committee (FOMC). Through the FOMC the Board of Governors directs the market activities of the reserve banks. By adjusting the amount of United States Government securities bought and sold by the system, the FOMC regulates indirectly the amount of credit available for other purposes, as well as market rates paid on such investments. Each Member Bank holds stock in the reserve bank which serves its district, and is required to maintain its legal reserves on deposit with its district reserve bank. 1 FED. BANKING L. REP. (CCH) 1301-1307.

15. E. WHITE, *supra* note 13, at 97, 98.

16. National Bank Act, ch. 106, §§ 6-8, 13 Stat. 99, 101-02 (1864) (repealed 1913).

17. E. WHITE, *supra* note 13, at 160-161; *see infra* text accompanying notes 78-83.

18. Act of February 25, 1927 (McFadden Act), ch. 191, § 7, 44 Stat. 1224, 1228 (current version at 12 U.S.C. § 36 (1982)). The pertinent language states:

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

. . . .

(c) A national banking association may . . . establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the

on conditions equivalent to those allowed state banks.¹⁹

The rash of bank failures of the 1920's once again sparked the movement for bank reform. One reform which was proposed at this time was a provision allowing interstate branch banking by national banks.²⁰ The proponents of this reform argued that branching would increase competition, eliminate weak banks, and result in an overall strengthening of the banking system.²¹ The Roosevelt administration, however, supported small state banks, and the reform legislation retained the prohibition on interstate branching.²² Thus, state banks continued to be protected from interstate branching of large banks by the Banking Act of 1933.²³

Included in the Banking Act of 1933 were several provisions dealing with bank holding companies (BHC's).²⁴ That Act, however, governed only those holding companies which included a federal reserve member bank as a subsidiary.²⁵ Political opposition to BHC activities was rampant between the 1930's and the 1950's, and much legislation was introduced to curb BHC's.²⁶ Then, in 1956, a compromise bill²⁷ was enacted which sought to control holding company expansion by requiring prior approval of the Federal Reserve Board of Governors of any BHC acquisitions.²⁸ The Bank Holding Company Act of

statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. . . .

. . . .

(f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

Id.

19. E. WHITE, *supra* note 13, at 164. It has been argued that, although the original purpose of the McFadden Act was to further competition, its actual effect is to hinder competition. *Federal Branching Policy: Hearings Before Subcomm. on Financial Institutions of Senate Comm. on Banking, Housing, and Urban Affairs*, 94th Cong., 2d Sess. at 408 (1976) (statement of Professor Kenneth Scott, School of Law, Stanford University).

20. H. BURNS, *AMERICAN BANKING COMMUNITY AND NEW DEAL BANKING REFORMS 1933-1935*, at 53 (1974).

21. *Id.* at 56.

22. Banking Act of 1933, ch. 89, § 23, 48 Stat. 162, 189 (current version at 12 U.S.C. § 36 (1982)).

23. Banking Act of 1933, ch. 89, 48 Stat. 162.

24. *Id.* at ch. 89, § 13, 48 Stat. 183.

25. G. FISCHER, *AMERICAN BANKING STRUCTURE 102-103* (1968).

26. *Id.* at 104.

27. Bank Holding Company Act of 1956, ch. 240, 70 Stat. 133 (currently codified at 12 U.S.C. §§ 1841-1850 (1982)). The Act defined BHC's, 12 U.S.C. § 1841(a) (1), and required BHC's to divest their non-bank interests, *id.* § 1843.

28. 12 U.S.C. § 1842(a). The Act provides that the Board shall not approve any acquisition which will further any attempt to monopolize the business of banking in

1956, as amended, continues as the primary means of regulating BHC's. While it was and still is generally held that the operation of multiple bank subsidiaries under the Act does not constitute branch banking,²⁹ bank holding companies are limited in the acquisition of subsidiaries across state lines. They may cross state lines only where expressly authorized by the law of the state which the bank holding company seeks to enter.³⁰

III. MISSOURI BANKING HISTORY

It is against this backdrop of federal legislation that the development of banking law in Missouri must be examined. Missouri banking developed independently of federal law until enactment of the National Bank Act of 1864. After that time, state developments became increasingly intertwined with those on the national level. Just as it is important to understand the historical developments of federal law, it is equally important to have an understanding of Missouri banking history in order to appreciate modern banking law in the state.

The Bank of St. Louis was granted the first banking charter in Missouri on August 21, 1813,³¹ but did not begin operations until December 13, 1816.³² The Bank of Missouri first opened for business on September 4, 1816, even though it did not receive its charter until January 31, 1817.³³ The charters of the two banks were very similar, and exhibited, even at that early date, the protectionist attitude of Missouri lawmakers in favor of Missouri banks. For example, the charter of the Bank of St. Louis provided that no more than one-quarter of the bank's stock could be sold outside the territories of Missouri and Illinois,³⁴ and that a stockholder not in residence within the United States

any part of the United States, nor any acquisition whose effect may be substantially to lessen competition, tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that such effects are clearly outweighed by the convenience and needs of the community to be served. The Act further requires that in every case the Board must consider the financial and managerial resources and future prospects of the banks concerned, and the convenience and needs of the community to be served. 12 U.S.C. § 1842(c).

29. *Grandview Bank & Trust Co. v. Board of Governors of Fed. Reserve Sys.*, 550 F.2d 415 (8th Cir. 1977), *cert. denied*, 434 U.S. 821 (1977).

30. 12 U.S.C. § 1842(d) (1982).

31. Act to Incorporate the Stockholders to the Bank of St. Louis, Laws of the Territory of Missouri, 1813, at 65.

32. T. HUBBARD & L. DAVIDS, *BANKING IN MID-AMERICA: A HISTORY OF MISSOURI'S BANKS* 15 (1969). Early banking in Missouri began in order to meet the needs of frontier adventurers seeking to finance their fur-trading expeditions. *Id.*

33. Act to Incorporate the Stockholders of the Bank of Missouri, Laws of the Territory of Missouri, 1817, at 96.

34. Laws of the Territory of Missouri, 1813, at 78, § 21. The charter further provided that anyone holding shares in violation of this provision would, on order of the president and directors, forfeit such shares, subject to appeal to the superior court of the territory. *Id.*

could not vote his shares, even if he retained his U.S. citizenship.³⁵ The charter also exhibited the early attitude toward branching, which, contrary to the modern view, allowed directors to "establish offices wheresoever they shall think fit" for the purposes of conducting the business of the bank.³⁶

The Bank's charter contained a conservative limitation on the issuance of its currency,³⁷ but contained no provisions requiring independent supervision or regulation.³⁸ Because of that omission, the Bank's chief cashier was able to construct a complicated scheme to deprive the Bank of its assets, which contributed greatly to the Bank's failure in 1819.³⁹ The Bank of Missouri survived through the recession of 1819, but failed in 1821.⁴⁰ The failure of the Bank of Missouri, which could not be traced to dishonesty or incompetence, served to ingrain in the people of Missouri a belief that banks and the banking system were inherently evil.⁴¹

35. Laws of the Territory of Missouri, 1813, at 74, § 13; T. HUBBARD & L. DAVIDS, *supra* note 32, at 16.

36. Laws of the Territory of Missouri, 1813, at 76, § 17. "[P]rovided nevertheless that the first office of discount and deposit shall be established at the town of St. Genevieve, and that no office of discount and deposit shall be established within less than fifty miles of the principal bank, nor within less than fifty miles of each other." *Id.* The requirement of an office at St. Genevieve was designed to enhance development of the state's lead production. T. HUBBARD & L. DAVIDS, *supra* note 32, at 17.

37. Laws of Territory of Missouri, 1813, at 71, § 8.

[T]he total amount of debts, which the said corporation shall at any time owe, whether by bond, bill, note or other contract shall not exceed double the amount of capital stock subscribed and actually paid into the bank and in case of excess, the directors under whose administration it shall happen shall be liable for the same in their separate and private capacities. . . .

Id. In the earlier period of American banking, each bank issued its own currency, or notes, against its holdings of gold or silver specie, which were paid into the bank as capital. The notes, which were issued when the bank made a loan, could be transferred as payment in commerce, or could be presented to the bank for redemption in specie. Many times during the early years of American banking, small banks would issue notes at such a high proportion to their holdings of specie that the notes became worthless as currency. The Missouri legislature attempted to prevent this abuse of paper issuance by limiting statutorily the rate at which notes could be issued. They neglected, however, to provide for enforcement of this provision, and the Bank of St. Louis fell victim to a note issue scheme which was used to drain the bank of its specie holdings. H. WALLGREN, *supra* note 8, at 331-33.

38. T. HUBBARD & L. DAVIDS, *supra* note 32, at 16-17.

39. *Id.* at 30-33.

40. *Id.* at 36.

41. *Id.* at 37. One of the leading opponents of the banking system was Missouri Senator Thomas Hart Benton. The flamboyant Benton believed that banks and the banking system were intent on gaining as much power as possible, at the expense of the general population. When, in 1818, the second Bank of the United States was forced to call many of its loans and foreclose on large real estate holdings, Benton, among others, accused the Bank of trying to acquire all the acreage in the west. *Id.* at 28. Benton led the fight in Congress to close the Bank and its branches, including the St. Louis branch, which had been so helpful in restoring Missouri's economy. See *infra* text accompanying note 43. Benton's major complaint was with the issuance of "branch bank

Statehood and growing economic activity produced a strong need for banking services.⁴² In 1829, a branch of the second Bank of the United States opened in St. Louis, and its efficient and responsible operations did much to restore public confidence.⁴³ Distrust continued, however, and the legislature refused to charter any new banks.⁴⁴ Finally, growing concern over the operations of out-of-state banks within Missouri forced the Missouri legislature to act.⁴⁵

Chartered on February 2, 1837,⁴⁶ the Bank of the State of Missouri was to be one-half owned by the State, and serve as its fiscal agent.⁴⁷ The charter required that the Bank establish no less than nine and no more than fifteen agencies at various locations around the state.⁴⁸ Coincident with passing the charter, the legislature also enacted legislation to prevent out-of-state banks from operating within Missouri.⁴⁹ Reflecting the conditions under which the Bank was chartered,⁵⁰ this legislation also promoted the protectionist attitude which had prevailed since the time of the first Missouri banks.⁵¹

Consistent with its charter, the Bank of the State of Missouri was conservatively managed, and emerged from the recession of 1836 in solid financial condition.⁵² Although the confidence of the public continued to grow, the economic needs of westward expansion went unfulfilled by the Bank's conservative management policies.⁵³ As a result, during the period from 1837 to 1857, private banks began meeting the credit needs of the state. As time began to

orders," which could be redeemed only in Philadelphia, and it was his campaign against the Bank and its branch bank orders which earned him the name of "Old Bullion." *Id.* at 3.

42. T. HUBBARD & L. DAVIDS, *supra* note 32, at 43-44.

43. *Id.* at 44-46.

44. *Id.* at 53.

45. *Id.* Most goods purchased for use in Illinois came to that state up the Mississippi River through St. Louis. These goods were paid for with paper on Illinois banks. This practice was perfectly acceptable to Missourians until Illinois, in an effort to stimulate its own economy, began issuing a large quantity of highly leveraged notes. Even the most ardent foes of banking regulation agreed that something had to be done to protect the interests of Missourians who were forced to take this questionable Illinois paper. *Id.*

46. Act of Feb. 2, 1837, 1837 Mo. Laws 11.

47. *Id.* § 3.

48. *Id.* § 34. Under the Act, a branch was established at Fayette, which branch was organized and governed under section 33. Section 34 required that agencies be established in each judicial circuit, and in addition provided that should any branch be established in place of any agency, then such agency would cease, and the branch would be governed by section 33. The Act did not, however, define or describe the powers of the bank agencies. Branches were initially opened at Fayette, Palmyra, Springfield, Jackson, and Lexington. T. HUBBARD & L. DAVIDS, *supra* note 32, at 55.

49. Act of Feb. 6, 1837, 1837 Mo. Laws 24.

50. *See supra* note 45.

51. *See supra* text accompanying notes 34-35.

52. T. HUBBARD & L. DAVIDS, *supra* note 32, at 60-62.

53. *Id.*

run out on the Bank's charter, financial leaders realized that the economy of the state needed more expansive banking services than the Bank had provided.⁵⁴ They also realized that private banks and saving institutions could not fulfill those needs.⁵⁵ The result was the passage of legislation which "heralded the dawn of modern banking as it is practiced in Missouri today."⁵⁶

The Banking Act of 1857⁵⁷ shifted the function of banking from the public sector to the private sector and set up a regulatory apparatus to ensure the safety and stability of the new banks.⁵⁸ The Act chartered nine new banks⁵⁹ and reorganized the Bank of the State of Missouri,⁶⁰ which was to continue as fiscal agent of the state⁶¹ and maintain seven branches.⁶² The Act required any bank with capital stock of one million dollars or more⁶³ to operate not less than two branches, each with capital of not less than one hundred thousand dollars.⁶⁴ The Act also increased the protectionist barriers which were enacted in 1837 in two ways: (1) by prohibiting the issue of notes payable outside the state,⁶⁵ and (2) by prohibiting banks from dealing in notes issued by banks located outside the state.⁶⁶

Public animosity toward the branch banking system first surfaced during this period. The nation plunged into the recession of 1857 shortly after the new banks received their charters and opened for business.⁶⁷ During this period, the head offices of the city banks found that the notes of their branch

54. *Id.* at 84.

55. *Id.*

56. *Id.*

57. Bank Regulation Act, 1856 Mo. Laws 14.

58. T. HUBBARD & L. DAVIDS, *supra* note 32, at 87. Article III of the Act established the office of Bank Commissioners. It was to be the duty of the Commissioner to authorize banks to commence business (section 6), to print and cosign bank notes (sections 7 and 8), to keep books on the circulation of the notes of the banks (section 10), and to examine the financial condition of the banks (section 11).

59. Art. IV, chs. I-IX, 1856 Mo. Laws 14. Banks chartered included: Exchange Bank of St. Louis, Bank of St. Louis, Merchant's Bank of St. Louis, City Bank of St. Louis, Merchant's Bank, Southern Bank of St. Louis, Farmer's Bank of Missouri, Western Bank of Missouri, and Bank of Commerce. *Id.*

60. *Id.* art. IV, ch. X.

61. *Id.* art. IV, ch. X, § 6.

62. *Id.* art. IV, ch. X, § 12. The Act specifically required that branches be established at Palmyra, Fayette, Springfield, Chillicothe, Cape Girardeau, Jefferson City, and Louisiana, and stated the minimum capital to be provided each of the branches. *Id.*

63. This included all of the banks chartered under article IV of the Act. In addition to the branches of the Bank of the State of Missouri, branches were located at Glasgow, Neosho, Kirksville, Boonville, Brunswick, Osceola, St. Genevieve, Kansas City, Columbia, Hannibal, Gallatin, Warsaw, Weston, Frederickton, St. Charles, Independence, Liberty, Paris, Bloomington, Fulton, Canton, Savannah, and New Madrid. T. HUBBARD & L. DAVIDS, *supra* note 32, at 83.

64. Art. II, § 1, 1856 Mo. Laws 14.

65. *Id.* art. I, § 42.

66. *Id.* art. I, § 43.

67. T. HUBBARD & L. DAVIDS, *supra* note 32, at 90.

banks tended to find their way into the head offices for redemption. Branch banks, like the parent banks, issued their own notes, or currency, against their capital holdings of gold or silver specie.⁶⁸ These notes could circulate in trade or be redeemed for specie. Because the branch notes were being redeemed at the parent banks, the branches were able to build relatively large supplies of specie at the expense of the parent banks.⁶⁹ Led by the Bank of the State of Missouri, the banks adopted a policy of not redeeming branch notes in specie.⁷⁰ Rather, the banks would redeem only in paper or at a discount in specie.⁷¹ The result was to create a second-class currency, thus alienating branch banks and their customers.⁷² The rural customers objected, sometimes violently, to the parent banks' practice of accepting branch paper at discount and then presenting the paper for redemption in full at the branch banks.⁷³ This motive for distrust of branch banking was eliminated with the decline of specie as a medium of exchange. However, the seeds planted during this period survived to be re-awakened in later years.

Many banks converted to national charter following adoption of the National Bank Act of 1864. So many Missouri banks converted that the state legislature abolished the Office of State Banking Commissioners.⁷⁴ An opposite trend soon followed, however, and in 1877 the legislature passed a new banking act.⁷⁵ This Act made no mention of branch banks, since branching apparently was not practiced by Missouri banks at the time. However, in 1899, in an attempt to prevent banking concentration in the cities,⁷⁶ an amendment to the Act was passed which prohibited branch banking.⁷⁷ Thus was born the

68. *Id.*; see *supra* note 37.

69. T. HUBBARD & L. DAVIDS, *supra* note 32, at 90.

70. *Id.* at 91.

71. *Id.*

72. *Id.*

73. *Id.* at 91. Another banking historian described the situation:

On two occasions the messengers [of the banks] were waited on by deputations of citizens and informed that they would not be allowed to raid the bank and take gold out of town. The necessities of the business called for a pretty high order of talent in the messenger—courage, address, and a capacity for diplomatic dealing. Sometimes, after drawing gold for his parcel of notes, he would be forced to appeal to the local Cashier's sense of justice and professional spirit, to take back the package of coin and keep it in his safe until arrangements could be made for transporting it [S]ome of the branch banks were located where the only regular conveyance was by stage coach—and this sometimes made it necessary, after allaying the local opposition by redepositing the coin in the bank, to withdraw it secretly and carry it off by special conveyance at night.

J. KNOX, *supra* note 3, at 785.

74. Act of Feb. 27, 1866, 1866 Mo. Laws 14.

75. Act of May 15, 1877, 1877 Mo. Laws 28.

76. Murdock, 'Show-Me' Banking . . . Gave Early Missouri a Solid Financial System, MID-CONTINENT BANKER, May 1955, at 184, 186.

77. MO. REV. STAT. § 1276 (1899). "[N]o [banking] corporation shall maintain a branch bank, receive deposits or pay checks, except over the counter of, and in

prohibition on branching which has survived in this state into the 1980's.

It was during the early 1900's that branch banking became a major national issue, and Missouri was to be at the forefront of the controversy. In 1911, the United States Department of Justice issued an opinion which concluded that national banks had no power, independent of the National Banking Act, to establish branches for the purpose of carrying on a general banking business.⁷⁸ Additionally, the opinion indicated that the National Banking Act, properly construed, affirmatively limited the practice of a general banking business by a national bank to one banking house in the place designated in the bank's certificate of organization.⁷⁹ States retained the power to allow branching by state chartered banks, however, and many states enacted liberal branching statutes.⁸⁰ The Federal Reserve, concerned over the inequality between its national and state member banks and the growing appeal of the state charter, recommended in 1915 that national banks be allowed limited branching privileges.⁸¹ In 1921, the Comptroller of the Currency recommended that Congress permit limited branching by national banks.⁸² When Congress failed to act, the Comptroller issued his own ruling that national banks would be allowed to open intracity offices, for the purpose of receiving deposits only, in states where state branch banking was permitted.⁸³

In rural Missouri, where most towns had at least one bank,⁸⁴ the issue seemed unimportant until the 1921 convention of the Missouri Bankers' Association (MBA). There, Raymond F. McNally, MBA president and a vice-president of the St. Louis National Bank of Commerce, first urged that "branch offices should be established at Kansas City and St. Louis."⁸⁵ The suggestion was repeated by the next president at the 1922 convention.⁸⁶

its own banking house." *Id.* The language of the 1899 amendment is identical to that used in today's version. MO. REV. STAT. § 362.107 (1978).

78. 29 Op. Att'y. Gen. 81, 98 (1911).

79. The opinion first distinguished bank agencies, operated for certain limited purposes, and bank branches, operated for the purpose of carrying on a general banking business. *Id.* at 86. The opinion recognized a line of authority holding that banks may maintain agencies, but argued that the authority did not extend to the proposition that banks may maintain branches. *Id.* at 90. After concluding that banks were without the power to establish branches without an express or implied grant of such power through their charters, the opinion went on to examine the National Banking Act to see if it granted such power. The opinion concluded that the Act did not grant, either expressly or by implication, the power to establish branch banks. *Id.* at 98.

80. E. WHITE, *supra* note 13, at 160.

81. *Id.* at 161-62.

82. COMPTROLLER OF THE CURRENCY, 1921 59TH ANNUAL REPORT 9.

83. G. FISCHER, *supra* note 25, at 45; E. WHITE, *supra* note 13, at 161. In 1923, a new opinion was issued by the Department of Justice on the issue of branching. This new opinion stated that the establishment of branch offices by national banks within their own cities would not be contrary to law. 34 Op. Att'y. Gen. 1 (1923).

84. T. HUBBARD & L. DAVIDS, *supra* note 32, at 156-57.

85. Missouri Bankers Association, Convention Proceedings, 1921, at 22.

86. Missouri Bankers Association, Convention Proceedings, 1922, at 22.

Within a matter of weeks the First National Bank of St. Louis announced plans to establish branch offices within the city.⁸⁷ When the state attorney general filed suit to enjoin operation of the branches, the stage was set for a confrontation which was nationally significant in view of the long held belief that national banks were limited to transacting business at a single location.⁸⁸

This confrontation culminated in the United States Supreme Court's decision in *First National Bank v. Missouri*.⁸⁹ Two issues were presented by this case: first, whether state statutes regulating banking were valid as applied to national banks,⁹⁰ and second, whether a state had the power to enforce such statutes against those banks.⁹¹

The Supreme Court stated that while national banks are instrumentalities of the federal government and subject to the authority of the United States, they are nevertheless subject to the laws of a state unless such laws "interfere with the purposes of [the bank's] creation, tend to impair or destroy their efficiency as federal agencies, or conflict with the paramount law of the United States."⁹² The Court termed "self-evident" the proposition that the prohibition on branches did not frustrate the purpose for which the bank was created or impair its efficiency as a federal agency.⁹³ After stating the rule that national banks may exercise "only such powers as are expressly granted or such incidental powers as are necessary to carry on the business for which they are established,"⁹⁴ the Court interpreted the statute to not conflict with the powers granted by the National Bank Act. The Court construed sections 5134 and 5190 of the National Bank Act as confining a bank to one office or banking house.⁹⁵ The Court found further support for its holding in the absence of separate capital provisions for branches,⁹⁶ the affirmative language of section

87. 104 BANKERS MAG. 1097 (1922).

88. *Id.*

89. 263 U.S. 640 (1924).

90. *Id.* at 655.

91. *Id.*

92. *Id.* at 656.

93. *Id.* at 659. The Court cited as evidence the fact that national banks had existed without branches for fifty years, on the theory that they lacked authority to establish them. *Id.*

94. *Id.* at 656.

95. *Id.* at 657. The Court noted that section 5134 required that the organization certificate of a bank state "the place where its operations of discount and deposit are to be carried on, designating the State, Territory, or district, and the particular county, city, town, or village." Section 5190, requiring that "the usual business of each national banking association shall be transacted at an office or banking-house located in the place specified in its organization certificate," was said, by its use of the article "an," to limit the bank to a single office or banking house. The Court refused to construe the statute otherwise, stating that it could only do so "to carry out the evident intent of the statute," and that nothing in the statute could be said to require such construction. *Id.*

96. *Id.* at 657.

If it had been intended to allow the establishment by an association of not one bank only but, in addition, as many branch banks as it saw fit, it is remarkable, to say the least, that there should have been no provision for

5155 which allowed state banks to keep their branches after joining the federal system,⁹⁷ and special Congressional action establishing branch banks.⁹⁸ The Court thus found that the power to establish branch banks had not been expressly granted to the national banks. The Court gave short shrift to the argument that the establishment of branch banks was an incidental power authorized by section 5136,⁹⁹ calling it "wholly illogical to say that a power which by fair construction of the statutes is found to be denied, nevertheless exists as an incidental power."¹⁰⁰

In turning to the second issue, whether the state had the power to enforce its statute against the national bank, the Court accepted the proposition that only the United States could inquire whether a national bank is acting in excess of its charter.¹⁰¹ The Court distinguished this action, however, on the ground that the state did not seek to inquire into a violation of federal law or of the powers of a federal charter, but was seeking instead to enforce its own law.¹⁰² Having ruled that the state statute was valid against the national bank, "the corollary that it is obligatory and enforceable necessarily results."¹⁰³

Having authoritatively established the power of the states to regulate the branching activities of national banks within their borders, *First National Bank v. Missouri* caused a flurry of political and legislative activity. Many states passed branching legislation, the majority of which forbade branching.¹⁰⁴ More importantly, activity increased on the federal level, and in 1927

adjusting the capital to the latter contingency or for determining how or under what circumstances such branch banks might be established or for regulating them.

Id.

97. *Id.* at 657-58.

This provision . . . may be fairly considered as constituting an exception to the general rule, and the presence of safeguarding limitations in the expected case, with their entire absence from the statute otherwise, goes far in the direction of confirming the conclusion that the general rule does not contemplate the establishment of branch banks.

Id. at 658.

98. *Id.* at 658. Apparently Congress found it necessary to enact special legislation to allow the establishment of branch banks at the 1892 Chicago Exposition, as well as the 1901 St. Louis Exposition. Such legislation expressly limited the period during which the branches could operate to one year. *Id.*; see Act of March 3, 1901, ch. 864, § 21, 31 Stat. 1440, 1444; Act of May 12, 1892, ch. 71, 27 Stat. 33.

99. The argument was based on section 5136 of the Act, which granted to national banks "all such incidental powers as shall be necessary to carry on the business of banking." It was contended that the establishment and operation of branches was a function which was necessary to carry on the business of banking. *First National Bank v. Missouri*, 263 U.S. at 649, 650 (argument for the United States, as amicus curiae).

100. *Id.* at 659.

101. *Id.* at 660.

102. *Id.*

103. *Id.* at 659-660.

104. E. WHITE, *supra* note 13, at 163.

the McFadden Act became law.¹⁰⁵ It can thus be said that, while the state maintained its strict prohibition on branch banking, Missouri led the way for liberalization of federal law with respect to the branching of national banks.

The decision also awakened the anti-branching passions of Missouri's rural bankers. Having apparently been lulled to sleep by the preceding period of prosperity,¹⁰⁶ the rural bankers failed to object in 1921 and 1922 when proposals for city branch banking were first made at the MBA conventions.¹⁰⁷ By the 1923 MBA convention, however, the rural bankers had been alerted. The Convention endorsed "unqualifiedly" a resolution which had been passed by the Executive Council of the Association earlier in the year.¹⁰⁸ The resolution forcefully rejected branch banking, and called for "such measures as will control and extinguish the branch banking idea."¹⁰⁹ Following on the heels of the United States Supreme Court's decision in *First National Bank v. Missouri*, the resolution expressed the bankers' belief that they had finally defeated the concept of branch banking. Such was not the case, as they would learn twenty-five years later.

The dispute over branch banking was revived with a vengeance by a series of newspaper stories which began on January 12, 1958. On that date, the *St. Louis Globe-Democrat* quoted a "highly placed official in the banking world" on the subject of branch banking.¹¹⁰ According to the source, Missouri was falling behind the rest of the nation in the banking field.¹¹¹ The article accused Missouri bankers and legislators of "merely postponing the inevitable in continuing to resist branch banking. Ostrich-like, they are hiding their head to currents which sooner or later will overtake them."¹¹² The reaction of Missouri's independent bankers was predictable. Unlike the episodes of 1921 and 1922, anti-branching forces mobilized quickly. Missouri bankers were urged to lobby their legislators in opposition to branching,¹¹³ and meetings were held at the annual MBA convention to instruct smaller banks on anti-branching tactics.¹¹⁴ An amendment to the MBA constitution adopting a policy of preserv-

105. *Id.* at 163-164; see *supra* text accompanying notes 16-19.

106. T. HUBBARD & L. DAVIDS, *supra* note 32, at 153-157.

107. *Id.* at 157; see *supra* text accompanying notes 85-87.

108. T. HUBBARD & L. DAVIDS, *supra* note 32, at 160.

We are opposed to any plan for branch banks in the State or Nation. We believe the branch bank idea is monopolistic in its nature and destructive of the sterling qualities of individual initiative and responsibility. We believe that the maintenance of our present system of single unit banks is of vital importance not only to the bank but to other lines of business as well.

Missouri Bankers Association, Convention Proceedings, 1923, at 221.

109. Missouri Bankers Association, Convention Proceedings, 1923, at 221.

110. *St. Louis Globe-Democrat*, Jan. 12, 1958, at 1, col. 1.

111. *Id.*

112. *Id.*

113. *St. Louis Globe-Democrat*, May 25, 1958, at 2A, col. 1.

114. *Id.* One tactic discussed was the possibility of moving correspondent accounts in order to punish pro-branchers and award anti-branchers. *Branch Banking Faces a Test*, *Bus. Wk.*, Oct. 11, 1958, at 53. This threat had particular effect in

ing the unit banking system was passed by a vote of 185 to 47.¹¹⁵ However, the outgoing president of the Association, a vice president of the First National Bank of St. Louis, refused to certify the amendment. While the anti-branching forces had suffered defeat, the pro-branchers must have recognized the influence that the 185 banks could assert in the legislature.¹¹⁶ On matters involving banking, the small country banks had the support of a majority in the state legislature, and they were stongly opposed to any form of branch banking.¹¹⁷ As a result, the pro-branchers decided to use the initiative petition and take their cause directly to the public.

On May 27, 1958, a group calling itself the Missouri Committee for Better Banking Facilities (MCBBF) announced plans for a referendum petition for an act which would allow limited branching within the state.¹¹⁸ At least two committees quickly formed in opposition, including the Committee for the Preservation of Competitive Unit Banking in Missouri, and Missourians Against Branch Banking.¹¹⁹ By July 1, 1958, MCBBF had solicited sufficient

Kansas City, one of the largest correspondent banking centers in the country. City National Bank and Trust Company felt compelled to send a letter to its correspondent banks affirming that it was not the policy of City National to "compete in any way with its correspondents. Therefore, we are opposed to any legislation giving us or any other bank this authority." First National Bank of Kansas City issued a similar letter to its correspondent banks. Commerce Trust Company, on the other hand, while recognizing that it did not wish to compete with its correspondents and therefore opposed statewide branching, nevertheless supported limited area branching as provided by Proposition 3, so that the bank could provide its customers "with services in a manner more nearly comparable to the way that other retail services [were] made available to them." *Kansas City Times*, June 24, 1958, at 23, col 1.

115. T. HUBBARD & L. DAVIDS, *supra* note 32, at 180; *BANK NEWS*, May 14, 1958. The text of the proposed amendment stated that "[i]t shall be an objective of this association to maintain and preserve the independent unit system of banking in Missouri." *Id.*

116. T. HUBBARD & L. DAVIDS, *supra* note 32, at 180-181.

117. *Branch Banking Faces a Test*, *supra* note 114, at 53. In fact the country banks had successfully opposed, in 1957, two laws introduced by branching supporters. H.B. 412, introduced by Rep. Hearnes, would have allowed banks to operate separate drive-in facilities. H.B. 481, introduced by Rep. Bachler, would have authorized certain banks in cities of over 100,000 people to operate branch banks. Both bills were allowed to die in committee. *House Journal*, 69th General Assembly, II *House Journal* at 1828, 1831 (1958).

118. *St. Louis Globe-Democrat*, May 27, 1958, at 1, col. 4. The Committee included Henry Caulfield, former Missouri governor; Russell L. Dearthmont, president of Missouri-Pacific Railroad; Edwin Clark, president of Southwestern Bell Telephone Co.; Donald Danforth, chairman of Ralston Purina Co; William A. Mann, president of Missouri Chamber of Commerce; Hugh Stephens, chairman of the Board of Curators of Stephens College; William M. Deramus, president of Kansas City Southern Railway; Jay B. Dillingham, president of Kansas City Stockyards Company, and Alex Lewi, president of Macy's Department Store. *Id.*; *BANK NEWS*, June 18, 1958; *Kansas City Times*, June 10, 1958, at 3, col 1.

119. MABB was chaired by Bradford Brett, president of the First National Bank of Mexico; L.E. Evans, president of the Maplewood Trust Co. of St. Louis, was vice-chairman; W.F. Enright, Jr., vice-president of the American National Bank of St. Jo-

signatures to place Proposition 3 on the ballot.¹²⁰

During the campaign, some bankers sought to preserve the genteel, conservative image long cultivated by banks, and refused to engage in emotional advertising.¹²¹ Others did not feel so constrained, and sought to appeal to the public's emotions by warning against, on the one side, the monopoly banking interests of the large city banks, or the rural/suburban/neighborhood bank monopoly of the anti-branchers on the other. Opponents of branching enlisted the aid of such notables as former President Harry S. Truman and Rep. Clarence Cannon, chairman of the House Appropriations Committee. Pro-branchers had the help of Governor Blair and Lon Hocker. Each side advertised testimonials of these dignitaries supporting their respective causes.

Behind the emotional advertising, however, were positions founded in logic. Country bankers argued that branching would result in a dangerous concentration of credit, resulting from the absorption of small country banks by the larger city institutions.¹²² The pro-branchers, apparently following the lead of the *St. Louis Globe-Democrat*,¹²³ argued that branching would stimulate economic development within the state, and allow the banking public to be better served.¹²⁴ The real force behind Proposition 3 may have been the post-war flight to the suburbs. As families moved out of the cities, and as business followed, growth in deposits of city banks dropped drastically when compared to suburban banks.¹²⁵ The city banks complained that, unlike other businesses, banks were prohibited from following their customers to the suburbs.¹²⁶ The ability to establish branches within an "urban area" would allow the banks to follow their customers and maintain their deposit base.

In early July 1958, petitions carrying twice the required number of signatures were filed. According to a *Globe-Democrat* editorial, the response indi-

seph, served as secretary; and John C. Harris, president of the Callaway Bank of Fulton, was treasurer. *BANK NEWS*, July 16, 1958.

120. *St. Louis Globe-Democrat*, July 2, 1958, at 6A, col. 1. Proposition 3 would have allowed banking institutions, upon prior approval of the Commissioner of Finance, to operate branches within the city, town, village, county, or the urban area in which its principal office was located. An urban area was defined as any municipality with a population in excess of 400,000 plus the adjacent territory within twelve miles of the city limits of such municipality.

121. *St. Louis Post Dispatch*, Nov. 3, 1958, at 8A, col. 4.

122. *Branch Banking Faces a Test*, *supra* note 114, at 54; *Kansas City Times*, June 10, 1958, at 3, col. 1.

123. *Branch Banking Faces a Test*, *supra* note 114, at 53. The *St. Louis Globe-Democrat* ran a series of stories beginning on January 12, 1958, extolling the virtues of branch banking, and continued to editorialize in support of the initiative petition. *See, e.g.*, *St. Louis Globe-Democrat*, July, 2 1958, at 6A, col. 1.

124. *Kansas City Times*, June 10, 1958, at 3, col. 1.

125. *Branch Banking Faces a Test*, *supra* note 114, at 53. According to the Committee for Branch Banking, deposits in downtown St. Louis grew only 63% between 1942 and 1957, while deposits of outlying city banks and suburban banks grew 247% and 546%, respectively, during the same period. *Id.* at 56.

126. *Id.* at 56.

cated "the depth of sentiment for modernization of the state's banking laws in the interest of all the people."¹²⁷ Apparently "all the people" disagreed, however; Proposition 3 was defeated by a two-to-one margin, failing to win a single county in the state.¹²⁸ The results were hard to justify. The pro-brancher's arguments of increased economic development and improved banking services seem stronger than the more emotional position of the anti-branchers. The best answer seems to be that the voters had expressed a conservative desire to deal with bankers with whom they were familiar. This desire was not swayed by assurances of improved efficiency or convenience.¹²⁹

The campaign almost had a disastrous effect on the Missouri Bankers' Association. Anti-branchers had become embittered with the Association when their anti-branching amendment was rejected by the Executive Committee in June, 1958.¹³⁰ When they tried to reintroduce the amendment at the next convention, many of the larger banks hinted at withdrawal from the Association should such an amendment to the organization's constitution be adopted.¹³¹ Rather than cause such a split, the independent bankers withdrew the amendment and instead passed a floor resolution pledging the MBA to support the unit system of banking.¹³²

IV. MODERN BANKING STRUCTURE IN MISSOURI

The branching antagonists reached another compromise in 1959 which shaped Missouri banking structure into the 1980's and, along with the rise of the bank holding company, has probably prevented further disputes on the issue of branching. It was during the 1959 session of the Missouri General Assembly that House Committee Substitute for House Bill No. 568 was passed.¹³³ In its statement of purpose, the Act recognized the growing prominence of automobile banking.¹³⁴ The Act stated that it was in the public interest that banking institutions be permitted to provide such automobile banking services at locations separate from their main banking offices.¹³⁵

Under the Act, every bank was entitled to operate one facility for drive-in

127. St. Louis Globe-Democrat, July 2, 1958, at 6A, col. 1.

128. St. Louis Post Dispatch, Nov. 5, 1958, at 1A, col. 1. The paper also reported that local bank stocks dropped two to four points in over-the-counter trading the day after the election. *Id.*

129. T. HUBBARD & L. DAVIDS, *supra* note 32, at 186.

130. *See supra* text accompanying note 115.

131. T. HUBBARD & L. DAVIDS, *supra* note 32, at 186-87.

132. *Id.* All was not forgiven, however; the Independent Missouri Bankers Association was organized in 1959. *Id.*

133. Laws of Missouri, 1959, 568, § 1.

134. *Id.* Left unstated was the impact of suburban growth. The city banks may have hoped to retain some of their suburban customers by providing drive-up facilities. *See supra* text accompanying notes 125-26.

135. Laws of Missouri, 1959, 568, § 1.

and walk-up services¹³⁶ so long as the facility was within one thousand yards of the main banking house¹³⁷ and within the limits of the city, town, village, or unincorporated community in which the banking house was located.¹³⁸ Additionally, the facility could not be closer than 400 feet to the main banking house of a competitor.¹³⁹

Permission of the Commissioner of Finance was required for the operation of a facility.¹⁴⁰ The Commissioner, in reviewing applications for a facility, was required by the Act to consider the convenience, needs and welfare of the community, the financial strength of the bank in relation to the cost of establishing such facility, and whether other banking institutions would be seriously injured by approval of such application.¹⁴¹ Rulings of the Commissioner in granting or denying applications were subject to appeal and review.¹⁴²

The Act survived intact from 1959 until 1971, when the first in a series of amendments was made. With the exception of a 1972 change making clear the territorial limits within which facilities may be located,¹⁴³ all of the amendments have liberalized the original Act. The 1971 amendment extended authority to make, exchange and issue bank money orders, and receive loan payments at facilities.¹⁴⁴ Additionally, it lengthened the allowable distance between a main banking house and its facility from one thousand yards to four thousand yards.¹⁴⁵ In 1972, banks were granted authority to maintain and rent safe deposit boxes at their facilities.¹⁴⁶ More importantly, each bank was allowed to have two separate facilities.¹⁴⁷ The 1972 amendment made clear, however, that a bank could not locate its facilities outside of the county where its main banking house was located, even though the limits of the city in which the banking house was located crossed county lines.¹⁴⁸ In 1978, banks were extended the authority to make loans at all facilities.¹⁴⁹

In 1982, the legislature began a round of amendments which liberalized the facilities law to an even greater degree. First, banks were authorized to provide at their facilities all services which they provided at their main of-

136. *Id.* § 2(1).

137. *Id.* § 2(2)(b).

138. *Id.* § 2(2)(c).

139. *Id.* § 2(2)(d): "unless such facility shall be located closer to the main banking house of the banking institution operating such facility than it is to the main banking house of any other then existing banking institution, or unless such banking institutions affected shall consent thereto in writing." *Id.*

140. *Id.* § 2(2)(e) 2(3).

141. *Id.* § 2(3). These standards of consideration have survived intact into the current version of the Act. MO. REV. STAT. § 362.107 (1978).

142. Laws of Missouri, 1959, at 568, § 2(4).

143. Laws of Missouri 1971, at 349, § 1 (H.B. 146).

144. *Id.*

145. *Id.*

146. Laws of Missouri 1972, at 973, § 1.

147. *Id.*

148. *Id.*

149. Laws of Missouri 1978, at 623, § 1 (S.B. 794).

files.¹⁵⁰ Under the 1982 amendment, if a bank's main banking house was located in St. Louis County,¹⁵¹ in an unincorporated community, or in an incorporated city, town, or village having a population of less than 28,000, the bank was limited to two facilities.¹⁵² However, banks in St. Louis County¹⁵³ were allowed to locate their facilities outside their own city limits, so long as they remained within the county.¹⁵⁴ Banks located in cities having populations of 28,000 or more, and not within St. Louis County, were entitled to three facilities but they were limited to operations within the limits of their city.¹⁵⁵ Most banks were required to operate their facilities within the limits of their county, even if their city limits crossed county lines.¹⁵⁶

The legislature further liberalized section 362.107 of the Revised Statutes of Missouri in 1983. Now, all banks located in first class counties or in incorporated cities, towns or villages having a population of 28,000 or more may have three facilities.¹⁵⁷ All other banks are limited to two facilities.¹⁵⁸ Banks located in counties of the first class¹⁵⁹ may operate their facilities outside the limits of the city in which the main banking house is located, but most banks are required to operate their facilities within the limits of their county, even if the limits of their city cross county lines.¹⁶⁰

The 1983 legislature took additional steps in amending section 362.107. First, the section now provides that when banks merge, the surviving bank, after designating a main banking house, may operate all the banking houses and facilities which had been operated by the banks prior to merger.¹⁶¹ Additionally, the surviving bank retains any right to apply for additional facilities which any of the merged banks could have applied for prior to the merger.¹⁶² The banks must have been in existence for three years and must be located in

150. Laws of Missouri 1982, at 533, § 1 (H.B. 1079).

151. The actual text of the section refers to "a county of the first class having a charter form of government and adjacent to a city not within a county." *Id.* St. Louis County is the only such county in the state.

152. *Id.*

153. *See supra* note 151.

154. Laws of Missouri 1982, at 533, § 1 (H.B. 1079).

155. *Id.*

156. *Id.* The 1982 amendment provided that where a bank's main banking house is located with in a city, town, village, or unincorporated community which is located in a county or counties which border any lake having at least a one-thousand mile shoreline, then the bank may locate its facility in an adjacent county, so long as it is within the city limits and within five miles of the main banking house. Only one bank met the qualifications of this provision.

157. Laws of Missouri 1983, § A (H.B. 565), *codified at* MO. REV. STAT. § 362.107(2)(1).

158. *Id.*

159. *See infra* note 164.

160. MO. REV. STAT. § 362.107(2)(2) (1978).

161. *Id.* § 362.107(6).

162. *Id.*

the same county.¹⁶³

Secondly, section 362.107 now permits certain banks to protect their market by locating facilities across county lines. A bank located in a second, third, or fourth class county¹⁶⁴ adjacent to a first class county may locate a facility within the first class county under certain conditions.¹⁶⁵ If a bank in a first class county places a facility within that county which is also within the normal business trade area of a bank in an adjacent second, third, or fourth class county, then the bank within the second, third, or fourth class county may locate its facility within the first class county.¹⁶⁶ A bank's "normal business trade area" is determined by the director of the division of finance.¹⁶⁷

Section 362.107 has been amended over the years to satisfy the needs of banks and the banking public. The legislature has probably avoided another branch banking battle by granting banks authority to provide a wide range of services to their customers at a variety of locations. Another factor that has probably contributed to keeping the intrastate branching issue at bay is the rise of the bank holding company.

Although Congress enacted the Bank Holding Company Act of 1956 in an effort to curb bank holding company (BHC) activities and to promote independent competitive banking,¹⁶⁸ Missouri BHC's have nevertheless experienced massive growth during the past thirty years. In fact, BHC expansion became so widespread that in 1974 the Missouri legislature imposed a state limitation on BHC acquisitions.¹⁶⁹ Under this law, it is impermissible for a BHC to acquire any bank if the total bank deposits of the acquired bank plus all other Missouri banks owned by the BHC exceed thirteen percent of total bank deposits in the state.¹⁷⁰ Additionally, in determining whether to approve an application for acquisition, the director of the division of finance must determine whether the proposed acquisition is "consistent with the interest of promoting and maintaining a sound banking system."¹⁷¹

At the time the Bank Holding Company Act of 1956 was enacted, it was

163. *Id.*

164. Counties are classified according to the statutory scheme of Chapter 48 of the Revised Statutes of Missouri. First class counties are those counties having an assessed valuation of four hundred million dollars or more. Second, third, and fourth class counties each have successively lower levels of assessed valuation. MO. REV. STAT. § 48.020 (1978).

165. MO. REV. STAT. § 362.107(8) (1978).

166. *Id.* The facility must be located within the bank's normal business trade area.

167. *Id.*

168. HOUSE COMM. REP. NO. 609 (1955), 84th Cong., 1st Sess., 2-3; 4 FED. BANKING L. REP. (CCH) ¶ 43,041.

169. Laws of Missouri 1974, at 886, *codified at* MO. REV. STAT. § 362.910 *et seq.*

170. MO. REV. STAT. § 362.915 (1974).

171. MO. REV. STAT. § 362.920(2) (1974) (Supp. 1978).

said that holding company banking was nothing more than branch banking.¹⁷² Despite this popular recognition of the nature of holding company banking, and despite holdings which indicate that under certain circumstances BHC activity may constitute illegal branching,¹⁷³ under the majority rule, operation of multiple bank subsidiaries does not constitute branch banking.¹⁷⁴ A leading Missouri case on the subject recognized that, while holding company banking has many of the characteristics of branch banking, whether the practice ought to be disallowed is a question for the legislature rather than the courts.¹⁷⁵ As long as there is no evidence that a subsidiary receives deposits, pays checks, or lends money on behalf of the parent bank, the activity is not branching and is valid under the bank holding company laws.¹⁷⁶

V. FUTURE OF BRANCHING IN MISSOURI

While the advent of the BHC helped stem the need for more liberal branch banking legislation in the state, modern developments in banking technologies have increased the pressure for legislative change. In particular, the rise of electronic funds transfer technology has brought into doubt the usefulness of geographic restrictions on the business of banking.¹⁷⁷ Because banks can now reach their customers with relatively inexpensive electronic terminals rather than traditional brick and mortar facilities, pressure is on to allow exploitation of the new technologies.¹⁷⁸ In light of holdings that electronic terminals constitute branches under federal law,¹⁷⁹ legislation is needed to relieve this pressure.

A bill considered by the Eighty-Second Missouri General Assembly in its Second Regular Session addressed the problem of developing technologies by establishing that "electronic devices" are not branches or facilities under state

172. The St. Louis Globe-Democrat took the same position in its 1958 series extolling the virtues of branch banking. *See, e.g.*, St. Louis Globe-Democrat, January 19, 1958, at 9A; *see supra* text accompanying notes 110-112. The article argued that branching was more desirable than BHC's because BHC's were not fully regulated (notwithstanding the Act of 1956) and because their existence was largely unknown to the banking public.

173. *Whitney Bank v. Bank of New Orleans*, 323 F.2d 290 (1963), *rev'd on other grounds*, 379 U.S. 411 (1965).

174. *Grandview Bank & Trust Co. v. Board of Governors*, 550 F.2d 415 (8th Cir.), *cert. denied*, 434 U.S. 821 (1977).

175. *Id.* at 419-20.

176. *Id.* at 420.

177. *Federal Branching Policy, Hearings Before Subcomm. on Financial Institutions of Senate Comm. on Banking, Housing, and Urban Affairs*, 94th Cong., 2d Sess. 127 (1976) (statement of Donald P. Jacobs, Dean, Graduate School of Management, Northwestern University).

178. "[G]rowth and development of EFTS will make it increasingly difficult to use geographic boundaries as a basis for controlling competition among banks, The pressures to relax branching restrictions will increase." *Id.* at 411.

179. *State v. First Nat'l Bank*, 538 F.2d 219 (8th Cir.), *cert. denied*, 429 U.S. 941 (1976).

law.¹⁸⁰ Under the bill, a bank would be entitled, after approval of the Commissioner of Finance,¹⁸¹ to employ any number of "electronic devices or machines" which would permit the bank to receive and act upon communications from its customers requesting "banking services."¹⁸²

The bill was deficient in several respects. First, it failed to define "electronic devices or machines." Given the wide variety of devices available for use today,¹⁸³ it would be appropriate to define specifically the devices available for use by banks.¹⁸⁴ For instance, it is unclear whether the legislature intends that banks be allowed to communicate with their customers through the use of home computers,¹⁸⁵ since this would constitute a major departure from current Missouri banking practices.

Another deficiency in the bill is that it does not define "banking services," or specify which services may permissibly be supplied by banks through electronic devices. The act provides that accounts may not be opened at any such devices, nor can customers apply for lines of credit or loans using these devices.¹⁸⁶ This implies that any other banking service may be provided, so long as the technological capability exists. However, it would be useful to define specifically those services which are permissible.¹⁸⁷

180. S. 428, 82d Gen. Assem., 2d Reg. Sess. § 1(1) (1983). A similar bill was under consideration by the House, but that bill has apparently died in committee. H.R. 870, 82d Gen. Assem., 2d Reg. Sess. (1983). The House bill would have remedied some of the problems presented by S.B. 428. See *infra* notes 184, 187.

181. S. 428, 82d Gen. Assem., 2d Reg. Sess., § 1(3) (1983). The bill would require the commissioner to approve an application "upon determining that the bank . . . can safely utilize such electronic devices or machines considering its financial strength and managerial capability." *Id.*

182. *Id.* § 1.

183. Such devices and electronic systems include automated teller machines (ATM), point of sale terminals (POS), preauthorized payments and deposits, check guarantees, telephone payments, wire transfers, and even personal computing systems located in the home. 1 W. SCHLICHTING, T. RICE & J. COOPER, *supra* note 12, §§ 8.01-9.04.

184. House Bill 870 would have defined "electronic device or machine" as an ATM or POS owned or controlled by a bank or an individual for use in his own private residence. H.R. 870, 82d Gen. Assem., 2d Reg. Sess., § 1(1) (1983). One flaw in H.R. 870 may be that while it defines "electronic device" to include POS, the bill also provides that such devices shall not be staffed. *Id.* § 2. Typically, a POS would be incorporated into the cash register or cash receipt process of a retail business and would be manned by an employee of the business. The bill is inconsistent in that regard.

185. *But see* H.R. 870, 82d Gen. Assem., 2d Reg. Sess., § 1(1) (1983) (defining "electronic device or machine" to include an ATM or POS owned by an individual for use in his own private residence). It may be that the drafters intended that the use of home computer terminals be permitted under the bill, but such a purpose is not properly expressed by the bill as introduced. An ATM is a device that dispenses cash and takes deposits and is clearly not a device for home use. A POS is defined by the bill as a device located on the premises of a retail business. *Id.* § 1(3). Any future bills should state clearly whether the use of home terminals is permitted.

186. S. 428, 82d Gen. Assem., 2d Reg. Sess., § 1(3) (1983).

187. H.R. 870, 82d Gen. Assem., 2d Reg. Sess., § 1(1) (1983) would permit a

Finally, the bill would permit interstate banking activity through the use of electronic devices. Banks in adjacent states would be permitted to locate such devices in Missouri and provide the same services as are provided by Missouri banks through such devices, so long as reciprocity exists for Missouri banks operating in the adjacent state.¹⁸⁸ The argument in favor of such a provision is that many of the metropolitan banks in Missouri serve customers living in adjacent states; those banks ought to be allowed to provide banking services for those customers in locations convenient to the customers' homes. The bill, however, contains no limitations consistent with the argument.¹⁸⁹ Under the bill, any Chicago bank would be permitted to establish its machines anywhere within the state of Missouri and would be permitted to provide many banking services provided by Missouri banks. Coupled with the restriction against taking loan applications through these machines, this reciprocity provision lends credibility to the prediction that a giant Chicago banking institution would drain Missouri deposits out of the state for lending purposes in other markets.¹⁹⁰ It would be more appropriate to save any legislation which provides any level of interstate banking activity for inclusion in a cohesive, comprehensive legislative package designed specifically to address that problem.

Pressure has been building over recent years for interstate banking legislation. In 1981, the outgoing Carter Administration recommended a "phased liberalization" of current limitations on interstate branching.¹⁹¹ Currently, many of the nation's largest financial institutions are pressing for interstate

bank to act on communications from its customer "requesting the amount of funds in an account, or requesting the withdrawal of funds either from the customer's deposit account or from a previously authorized line of credit, or instructing the bank . . . to receive funds or transfer funds for the customer's benefit." *Id.* § 2. The bill would permit the receipt of cash or checks and the dispensing of cash. *Id.*

188. S. 428, 82d Gen. Assem., 2d Reg. Sess., § 2 (1983). H.R. 870 contains a similar provision. H.R. 870, 82d Gen. Assem., 2d Reg. Sess. § 7 (1983).

189. One possible limitation would be to limit the applicability of the reciprocity provision to banks within a Standard Metropolitan Statistical Area (SMSA) which crosses state lines. Because SMSA's are drawn in such a manner as to define a particular population concentration which could be said to represent adequately a particular interstate market, such a limitation would fulfill the purposes of the proponents of such reciprocity.

190. See *infra* note 199 and accompanying text.

191. GEOGRAPHIC RESTRICTIONS ON COMMERCIAL BANKING IN THE UNITED STATES: REPORT OF THE PRESIDENT (1981). The Report proposes both short-term and long-term changes designed to improve the banking industry. Short-term proposals include interstate acquisitions by BHC's without the authorization of the acquired bank's home state, exemption of electronic funds transfer (EFT) terminals from the branching restrictions imposed by the McFadden Act, and authorization of interstate BHC acquisitions where necessary to accommodate the "failing bank problem." The long range program proposed by the Report would include full intrastate branching in all states, interstate branching for banks within SMSA's, and unrestricted interstate deployment of EFT terminals. See Bell & Wilmarth, *The Interstate Banking Controversy: President Carter's McFadden Act Report*, 99 BANKING L.J. 722 (1982).

operation of bank holding companies and Missouri is a target state.¹⁹² Three bills considered by the Eighty-Second Missouri General Assembly would have allowed some forms of interstate bank holding company operations.¹⁹³ The proposal that received the most serious consideration was Senate Bill No. 598, which would have allowed any out-of-state bank holding company to acquire any number of Missouri banks,¹⁹⁴ subject to a limitation on total deposits and approval of the director of finance.¹⁹⁵ The bill contained no requirement of reciprocity with the acquiring BHC's home state.

Proponents of the bill argued that the introduction of interstate competition to Missouri's banking markets would result in improved competition.¹⁹⁶ Such competition, it was predicted, would result in higher levels of banking services, higher interest rates paid on deposits, and lower interest rates charged on loans.¹⁹⁷ Proponents also predicted that economic development would result since increased levels of funds will be available for capital investments.¹⁹⁸

Opponents of the bill responded by predicting that the financial giants which support the legislation will not invest their newly acquired deposits in local lending activities, but will instead use Missouri deposits to fund national and international lending programs.¹⁹⁹ Such a result, they argue, would clearly be harmful to Missouri's economy. Opponents also insist that those institutions which will take advantage of the legislation are simply too large for Missouri banks to compete with. Having been prevented by state law from developing their own networks of branch banks, Missouri banks are not in a position to compete effectively with the larger institutions.²⁰⁰

Some evidence supports the argument that the advent of interstate banking will benefit consumers in terms of services and interest rates.²⁰¹ Additionally, the proposed bill retains the limitation on total deposits which any BHC could acquire in the state, thus reducing the danger of harmful concentration

192. St. Louis Post Dispatch, Jan. 22, 1984, at 1B, col. 4. Other states currently considering interstate banking legislation include Arizona, Nevada, Kentucky and Georgia. Columbia Missourian, Apr. 22, 1984, at 8B, col. 1.

193. House Bill 1239 would have allowed BHC's in states adjacent to Missouri to operate in Missouri if the law of their home state allows Missouri BHC's to operate within that state. H.R. 1239, 82d Gen. Assem., 2d Reg. Sess. (1983). Senate Bill 1368 would not limit the privilege to BHC's doing business in states adjacent to Missouri. S. 1368, 82d Gen. Assem., 2d Reg. Sess. (1983).

194. S. 598, 82d Gen. Assem., 2d Reg. Sess., § 1 (proposed § 362.926(1)).

195. *Id.* Under the bill, the director must determine that the proposed acquisition is consistent with the interests of maintaining a sound banking system, the security of deposits, the preservation of bank liquidity, and the interest of preventing injurious fluctuations in the level of available credit. *Id.*

196. Columbia Daily Tribune, Apr. 20, 1984, at 8, col. 1.

197. Columbia Missourian, Apr. 22, 1984 at 8, col 1.

198. *Id.* But see *infra* text accompanying note 203.

199. Columbia Missourian, Apr. 22, 1984 at 8, col 1.

200. Columbia Daily Tribune, Apr. 20, 1984, at 8, col. 1.

201. Report of the President, *supra* note 191, at 143-46.

of banking assets.²⁰² On the other hand, the proponents of the bill have expressed their expectations of using Missouri deposits to fund loan growth in other parts of the nation.²⁰³ Finally, the aspect of highly personal banking relationships provided by small locally owned banks is always an important factor in Missouri.²⁰⁴

VI. CONCLUSION

Whatever the relative merits of the opposing views, it is certain that branch banking will continue to be an important issue. Banking in Missouri has been in a constant state of development and refinement since the first charter was issued in 1813. In the past twenty years that development has accelerated and, with rapidly improving technologies in banking services, it is sure to continue. Only by continuing to meet the wants and needs of the banking public will Missouri's banks continue to thrive. The only question remaining is, how will Missouri's banks, in partnership with the legislature, choose to meet the challenge?

The best approach to meet the challenge presented by the branching issue would be to adopt a comprehensive package of banking legislation designed to address the realities of today's banking markets. Almost all Missouri bankers recognize that some form of branching, either intrastate or interstate, is inevitable. The Missouri Bankers' Association has advocated a gradual program, beginning with an easing of intrastate restrictions and eventually allowing some level of interstate activity.²⁰⁵ Such a process would allow Missouri banks to position themselves in the marketplace in such a manner as to maximize their ability to compete, while at the same time avoiding massive disruption of the current structure. Even if the legislature decides that a phase-in is unnecessary, it should approach the issue carefully and pass only a carefully planned, fully-integrated legislative package. In this manner, the integrity of the Missouri banking system can be maintained.

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202. S. 598, 82d Gen. Assem, 2d Reg. Sess., § 1 (proposed § 362.916); *see supra* notes 169-170 and accompanying text.

203. Columbia Daily Tribune, Apr. 20, 1984, at 8, col. 1.

204. *See supra* note 129 and accompanying text.

205. Columbia Daily Tribune, Apr. 20, 1984, at 8, col. 1.