



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

January 8, 1996

The Honorable Louie A. Jacobs  
Commissioner of Banking  
Board of Financial Institutions  
1015 Sumter, Street, Room 309  
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Commissioner Jacobs:

You have requested our advice regarding the scope of authority of an out-of-state bank which has been selected by the federal government to serve Marine Corps Recruit Depot, Paris Island (hereafter MCRD). Apparently, the Fort Sill National Bank of Fort Sill, Oklahoma, will establish a facility at MCRD Paris Island.

Although the authority of the federal government to establish banking facilities on military installations is well founded, the issue you have raised is critical to an understanding of the services which Fort Sill National may provide to its customers. Clearly, as a general matter, the South Carolina General Assembly possesses broad authority to regulate the operation of banks in South Carolina. Floyd v. Thornton, 220 S.C. 414, 68 S.E.2d 334 (1951); Am. Trust Co. v. S. C. State Bd. of Bank Control, 381 F. Supp. 313 (D. S. C. 1974); FDIC v. American Bank Shares, 460 F. Supp. 549 (D. S. C. 1978). While this regulatory power apparently does not extend to banking operations within the confines of MCRD Paris Island, any attempt by Fort Sill National to establish a facility outside the physical limits of the base would fall within the South Carolina Legislature's authority to circumscribe branch banking. To that end, even a bank which is federally chartered is not completely immunized from state law. FDIC v. Raffa, 882 F. Supp. 1236 (D. Conn. 1995).

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Specifically, 12 U.S.C. Section 36 provides the conditions upon which a national banking association may retain or establish and operate a branch or branches. Subsection (c) in pertinent part states:

[a] national banking association may, with the approval of the Comptroller of the Currency, 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 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.

Although the courts have rejected the application of Section 36 to branches established on military installations, see, e.g. State of Texas v. Nat. Bank of Commerce of San Antonio, 290 F.2d 229 (5th Cir. 1961) this section clearly contemplates state authority to regulate branch banking within state regulatory jurisdiction. This office has previously opined that the logical application of Section 36 prohibits national banks from establishing branch banks across state lines. Op. Atty. Gen., November 13, 1979. Moreover, 12 U.S.C. Section 81 provides that "[t]he general business of each national banking association shall be transacted in the place specified in its organization certificate and in the branch or branches, if any, established or maintained by it in accordance with the provisions of section 36 of this title."

Based upon the reasoning and authority cited above, the Fort Sill National bank would be subject to whatever limitations and restrictions are imposed by state law should the bank attempt to establish substantial banking facilities beyond the physical confines of MCRD Paris Island. Thus, you may wish to consult with the Bank's officials, as well as the Treasury Department, in an effort to insure that the Branch does not intend to expand into the civilian community.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to be 'RDC', written in a cursive style.

Robert D. Cook  
Assistant Deputy Attorney General

RDC/an