



Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-58

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DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF CONNECTICUT RIVER BANK, CHARLESTOWN, NEW HAMPSHIRE

September 30, 1996

I. INTRODUCTION

On May 10, 1996, Connecticut River Bank, Charlestown, New Hampshire ("Connecticut River" or "the Bank"), a state-chartered, commercial bank, filed a letter of intent with the Office of the Comptroller of the Currency ("OCC"), pursuant to 12 U.S.C. 35, to convert into a national banking association to be called "Connecticut River Bank, National Association" ("Connecticut River - N.A.") with its main office in Charlestown, New Hampshire ("the Conversion Application"). As of December 31, 1995, Connecticut River has approximately \$88 million in assets and nearly \$81 million in deposits. Connecticut River currently operates five brick and mortar branches and two stand-alone customer bank communication terminal branches ("CBCT's") in New Hampshire.

Also on May 10, 1996, Connecticut River filed an application with the OCC for approval to change the location of its main office from Charlestown, New Hampshire to Springfield, Vermont, under 12 U.S.C. 30 (the "Relocation Application"). The Springfield, Vermont location is approximately five miles from the city limits of Charlestown, New Hampshire. During and after the relocation of its main office, Connecticut River - N.A. would retain its existing branches in New Hampshire.

Further, on May 10, 1996, Connecticut River 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 Charlestown, New Hampshire, under 12 U.S.C. 36(c) (the "Branch Application"). The new branch will open immediately after the main office is moved to Springfield, Vermont, so there will be no interruption of banking services to the bank's customers at that location.

The Conversion Application, Relocation Application and Branch Application are referred to collectively herein as the "Applications". The Applications will enable Connecticut River to offer banking services in both New Hampshire and Vermont. In its application materials, Connecticut River notes that Springfield, Vermont is across the Connecticut River from Charlestown, New Hampshire. After these transactions, Connecticut River - N.A. will be in a position to expand its business by offering banking services to residents and businesses in Springfield. It will have a positive effect on the Bank's expansion efforts and its ability to more effectively serve its existing customers who live in nearby Vermont communities. The Bank presently has \$6 million in deposits from Vermont customers and more than \$7 million in loans from Vermont borrowers. <NOTE: Currently, the Bank has a presence in Springfield. Its subsidiary, Connecticut

River Financial, Inc., is a licensed consumer lending company organized to make loans from an office in Springfield, Vermont. The entity, however, will cease operations after the Bank's conversion to a national charter.> The Bank estimates that during the next three years, the Bank's Vermont deposits and loans will increase by 40 percent. *See* Memorandum in Support of the Relocation Application at pages 7 - 8. Connecticut River also believes that the main office relocation will permit Connecticut River - N.A. to diversify its customer base across a wider geographic area and thereby mitigate market risk. *Id.*

In connection with its proposed conversion to a national banking association, Connecticut River Bank has requested OCC approval to hold certain stocks as a non-conforming asset following its conversion for a limited time until the value of the respective stocks equals or exceeds the cost value of the stock. The assets in question consist of common stock of Portland General Corporation and Delmarva Power & Light Company. The purchase of the stocks was permitted under New Hampshire law and on September 16, 1994, the Bank filed a one-time notice with the appropriate Regional FDIC Office, as required by 12 C.F.R. 362.4(d). As a state-chartered bank, Connecticut River's investment in the utility stocks is grandfathered under 12 U.S.C. 1831a. Upon conversion to a national bank, Connecticut River may hold its investment in the utility stocks under 12 U.S.C. 35, subject to any pre-existing conditions imposed by state law and under the Federal Deposit Insurance Act ("FDIA"), at the time of conversion.

Notice of the Applications was published on May 13, 1996 in the *Eagle Times*, a Claremont, New Hampshire newspaper of general circulation servicing the Bank's market area, including Springfield, Vermont and surrounding areas.

On May 16, 1996, the New Hampshire Bank Commissioner ("the Commissioner") wrote the OCC to oppose the Applications, objecting especially to Connecticut River's retention of its existing branches in New Hampshire when it relocates its main office to Vermont. With respect to the Relocation and Branch Applications, the Commissioner believes such branch retention is an illegal mechanism to engage in interstate banking. The New Hampshire Commissioner's protest letter was brief, but referenced support for the Texas Banking Commissioner's United States District Court challenge of these same issues in *Catherine A. Ghiglieri v. Eugene A. Ludwig* ("the Texarkana case"), No. 3-95-CV-2001-H (N.D. Tex. May 22, 1996). In that case, the district court recently issued Findings of Fact and Conclusions of Law, adopting the views of the Texas Banking Commissioner and finding the OCC's statutory interpretation, that 12 U.S.C. 30 & 36 permit a national bank to keep its existing branches when it relocates its main office across state lines, to be erroneous. <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*"). 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 agency's decision in the case. The court ignored Congress's action in amending sections 30 and 36 after the OCC's earlier adoption of the construction of the statutes at issue. In addition, the court also failed to properly consider the OCC's earlier statutory interpretation under the appropriate standards. *See Smiley v. Citibank (South Dakota), N.A.*, No. 95-860, ___ U.S. ___ (June 3, 1996); *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). The district court opinion is discussed at pages 12-13, 21-32, 38, 40.>

II. LEGAL AUTHORITY

These Applications involve a series of three transactions:

(A) The conversion of Connecticut River Bank, to a national charter under the title Connecticut River Bank, N.A.;

(B) The relocation of the national bank's main office from Charlestown, New Hampshire to Springfield, Vermont, and the bank's retention of its five existing branches in New Hampshire, under 12 U.S.C. 30; and

(C) The relocated bank's establishment of a new branch at the former site of its main office in Charlestown, New Hampshire, under 12 U.S.C. 36(c).

A. Connecticut River May Convert into a National Bank under 12 U.S.C. 35.

State banks may convert into national banks under 12 U.S.C. 35, which provides in pertinent part that:

Any bank incorporated by special law of any State or of the United States or organized under the general laws of any State or of the United States and having an unimpaired capital sufficient to entitle it to become a national banking association under the provisions of the existing laws may, by the vote of the shareholders owning not less than fifty-one per cent of the capital stock of such bank or banking association, with the approval of the Comptroller of the Currency be converted into a national banking association, with a name that contains the word "national": *Provided, however,* That said conversion shall not be in contravention of the State law

12 U.S.C. 35.

Under New Hampshire law a bank organized as a state bank in New Hampshire may convert into a national bank upon compliance with the laws of the United States and without any approval by New Hampshire authorities. *See* New Hampshire Rev. Stat. Ann. 389: 1 (1996). Accordingly, Connecticut River's conversion would not be in contravention of state law, and thus is authorized under section 35.

When a state bank converts into a national bank, the authority of the resulting national bank to retain the branches of the state bank is provided by 12 U.S.C. 36(b)(1). The resulting bank may retain the branches if: (A) the branch might be established as a new branch by the resulting bank under section 36(c); (B) the branch is grandfathered (*i.e.*, it was a branch on February 25, 1927); or (C) a similarly situated state bank resulting from the conversion of a national bank would not be prohibited by state law from retaining the branch. *See* 12 U.S.C. 36(b)(1)(A) - (C). Here, after the conversion, Connecticut River - N.A. could establish new branches in all the existing locations under 12 U.S.C. 36(c). State law allows any bank with its principal office within the state of New Hampshire to establish branches in any town within the state without numerical or geographic limitations. *See* New Hampshire Rev. Stat. Ann.

288: 6 (1996 Special Supp.), amending New Hampshire Revised Stat. Ann. 384-B: 2(I)(a) - (c). Therefore, Connecticut River - N.A. may retain all the branches under 12 U.S.C. 36(b)(1)(A).

Accordingly, Connecticut River may convert into a national bank and the converted bank may retain the branches of Connecticut River.

B. Connecticut River may Relocate its Main Office to Springfield, New Hampshire and Continue to Operate its Existing Branches in New Hampshire, under 12 U.S.C. 30.

In the Relocation Application, Connecticut River applied to change the location of its main office from Charlestown, New Hampshire, to Springfield, Vermont, a distance of approximately five miles. Connecticut River - N.A. will keep and continue to operate its existing branches in New Hampshire. Thus, after the relocation, Connecticut River - N.A. will be an interstate national bank operating in two states, with its main office in Vermont and branches in New Hampshire.

The Relocation and Branch Applications present one central legal issue: the authority of a national bank to retain its lawfully established, 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 Connecticut River - N.A. can become an interstate national bank (*i.e.*, a bank with branches in another state). Then, in the second transaction, the statutes of each state in which the bank is located are applied to determine whether the bank can establish new intrastate branches in each of those states. But, without the branch retention in the relocation transaction, there is no basis to proceed to the second transaction.

Thus, the central legal issue is a national bank's power to retain lawfully established, existing branches in an interstate relocation of its main office. In 1994, Congress addressed this very issue with the Riegle Neal Act and confirmed the OCC's prior interpretation of the statutes. <NOTE: Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994)(codified in sections of 12 U.S.C.)("the Riegle-Neal Act").> 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 our conclusions on the 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 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. 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 - 22.

Once Connecticut River - N.A. is an interstate national bank with branches in New Hampshire, the establishment of the new branch in Charlestown, New Hampshire, at the former site of its main office is 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 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), 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. Connecticut River - N.A.'s establishment of the new branch in Charlestown, New Hampshire is discussed at pages 34 - 39.

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*"); Decision on the Applications of Union Planters Bank, N.A. (OCC Corporate Decision No.____, August 28, 1996). > In that decision, because of the issues raised by the objection, we revisited our analysis of pre-Riegle-Neal law and thoroughly considered the impact of the Riegle-Neal Act on existing authority and the applicability of state law.

Therefore, the Relocation and Branch Applications by Connecticut River are similar to a number of prior interstate relocation and branching applications approved by the OCC. Indeed, the objections raised to them by the New Hampshire Bank Commissioner are similar to those that were 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 and are, thus, incorporated herein by reference.

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