

**BANKS AND BANKING: Banking Hours**

The main office of a state-chartered bank, under certain conditions, may remain closed for business while the branch offices of the bank are open for business.

No. 4659

January 13, 1969.

Mr. Robert P. Briggs  
Commissioner of Banking  
Financial Institutions Bureau  
Davenport Building  
Lansing, Michigan

You have called my attention to the opinion of the Attorney General, No. 2285, O.A.G. 1955-56 Vol. 1, p. 763, in which it was concluded that, "The main office of a state-chartered bank may not remain closed for business on Saturday mornings while the branches remain open."

You further state that subsequent to that date, the Uniform Commercial Code was passed which repealed and replaced in their entirety the Negotiable Instruments Law and the Bank Collection Code. You have asked:

- "1. May the main office of a bank remain closed on Saturday morning of each week while the branch offices of the bank are open for business?
- "2. May the banking hours vary between the main office of a bank and its branches?
- "3. In regard to questions 1 and 2 above, would it make any difference if the main office of a bank and its branch offices were located in different communities?
- "4. During week-days, other than Saturdays, may a bank remain closed for business after twelve o'clock noon?"

These questions are precisely the same questions that were answered by Opinion No. 2285, supra.

The 1955 Opinion stated:

"An analysis of your questions indicates that the problem as to what hours a bank and its branches should remain open for the transaction of business with the public must be considered from two aspects: first, as to what liability the bank may incur if it is not open for the purpose of presenting for payment or acceptance and the protesting and giving notice of dishonor of bills of exchange, bank checks and promissory notes; and second, the safety and convenience of the public." (Page 763)

"\* \* \* In this state two statutes bear on the problem of banking hours: the statute governing legal holidays \* \* \* and the Negotiable Instruments Law, \* \* \*." (Page 764)

The Opinion then develops the points that:

- (a) Under the provisions of the Negotiable Instruments Law and the Bank Collection Code (then in effect), a bank and its branches

should maintain identical hours (absent a contractual exception as mentioned in the 1955 opinion), and

(b) "The weight of authority is that a bank and its branches constitute but one corporation."

In 1962, the Michigan Legislature adopted the uniform commercial code, Act 174, P.A. 1962, as amended, being M.C.L.A. § 440.1101, et seq., M.S.A. 1964 Rev. Vol., § 19.1101 et seq., effective January 1, 1964. Article 3 of the code, entitled, "uniform commercial code—commercial paper," replaces in its entirety the Negotiable Instruments Law; and article 4 of the code, entitled, "uniform commercial code—bank deposits and collections," replaces in its entirety the Bank Collection Code. The uniform commercial code, as amended, contains the following two provisions which deal with the subject here under discussion:

(a) Section 3503(3) of the uniform commercial code provides that:

"Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties."

(b) Section 4106 of the uniform commercial code provides that:

"A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under article 3."

The language "and under article 3," which was added by amendment in 1964 is very significant in connection with the problem here under consideration, because article 3 of the uniform commercial code is the article which deals with commercial paper and which replaces in its entirety the former Negotiable Instruments Law. Therefore, a branch of a bank is considered a separate bank for purposes of computing time not only under code article 4 (dealing with bank deposits and collections), but also under code article 3 (dealing with commercial paper). Thus, the statutory foundation upon which the Attorney General based his 1955 Opinion has been superseded in Michigan by the uniform commercial code, as amended.

1. Answering your first question, it is my opinion that the main office of a bank may remain closed on Saturday morning of each week while the branch offices of the bank are open for business, providing that:

(a) The bank takes adequate precautions so that it is not guilty of any unsafe or unsound banking practices; and the fact that a bank opens some of its branches, but not its main office, on Saturdays does not of itself constitute an unsafe or unsound banking practice; and

(b) A bank which maintains its records in a central bookkeeping department (Computer Center) should make arrangements to keep this department open for information purposes whenever any branch is open.

2. Answering your second question it is my opinion that the banking

hours may vary between the main office of a bank and its branches under the same conditions as in Question 1.

3. Answering your third question, my answer is, "No," for the reasons advanced in the answer to your fourth question, *infra*.

4. Answering your fourth question, I am of the same opinion as expressed in the 1955 Attorney General Opinion on page 767 which reads:

"\* \* \* Section 1 of the statute governing legal holidays [M.S.A. 1957 Rev. Vol. § 18.861] states that every Saturday from 12 o'clock noon until 12 o'clock at night may, at the option of the bank concerned, be treated as a legal holiday for all purposes whatever as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes. The question raised is as to whether this particular reference to afternoon closing pursuant to law implies that a bank which closes after 12 o'clock noon on other secular days of the week incurs the possibility of liability for not being open for the transaction of business. I do not believe that this is the case. As previously indicated, banking hours in one community may vary from those in another. *Marshall et al v. American Express Co.*, [7 Wisc.1]. Prior to the enactment of the portion of Section 1 of the statute governing legal holidays, which provides for the Saturday afternoon closing of banks, it undoubtedly was the custom of banks in some communities in this State to close on Saturday afternoons while in other communities the custom was to remain open. This is recognized in the language of Section 1 of that statute, which states in pertinent part:

"\* \* \* nothing herein shall be construed to compel any bank \* \* \* in this state, *which by law or custom is entitled to close at 12 o'clock noon on any Saturday*, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid, on any Saturday after such hour except at its own option: \* \* \*." (Emphasis supplied)

"Undoubtedly the purpose of this provision of law relating to the Saturday afternoon closing of banks was to protect those banks which were located in communities where the custom was to remain open on Saturday afternoon from incurring the possibility of liability for closing during such periods. The implication is that this provision of law was enacted to protect banks which were located in communities where Saturday afternoon closing was not established by custom. I do not believe it is implied that, prior to the enactment of this provision of law, banks in every community of this State would have incurred the possibility of liability for closing Saturday afternoons. It follows that if it was the custom of banks in some communities to close on Saturday afternoons, such custom might be followed as regards other secular days. Such practice would be true at the present time. Therefore, I believe that there are two circumstances under which a bank may close after 12 o'clock noon on other secular days than Saturdays, without incurring the possibility of liability: first, in the situation where a bank is located in a community in which it is estab-

lished banking custom for a bank to so close; and, second, in the situation where it is the custom of banks to remain open during such periods, a bank may safely close by specifically contracting with its depositors that it may so close and, in addition, giving reasonable public notice of the fact."

FRANK J. KELLEY,  
*Attorney General.*

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**CONSTITUTIONAL LAW: Natural Resources—Constitutionally Declared Public Policy—Statutory Construction.**

**WATER RESOURCES COMMISSION: Authority—Copper and Iron Mining Operations.**

1. Art. 4, Sec. 52, Constitution of 1963, declares State's public policy is that the air, water and other natural resources of the State are to be protected from pollution, impairment and destruction and to this extent it prohibits the legislature from enacting any law which would violate the constitutionally declared public policy.
2. Statutes governing Water Resources Commission are not to be construed to permit destructive pollution of streams in the State.
3. Copper and iron mining operations are subject to the protective provisions of the water resources act.
4. Water Resources Commission is not authorized to issue order allowing destruction of fish and game habitat.

No. 4590

January 27, 1969.

Mr. Loring F. Oeming  
Executive Secretary  
Water Resources Commission  
Department of Natural Resources  
200 Mill Street  
Lansing, Michigan 48913

By recent letter you ask my opinion of the legality of a proposed order of the Water Resources Commission in connection with the proposed new use of Hills Creek and Lake Superior, Houghton and Keweenaw Counties, by Calumet and Hecla, Incorporated, Calumet Division, for disposal of waters from unwatering of the Calumet Conglomerate Lode in Houghton County. The company in its written statement and supplementary letters filed with the Commission, pursuant to Sec. 8(b) of Act 245, P.A. 1929, as last amended by Act 405, P.A. 1965<sup>1</sup> proposes to dispose of an average of 6,000 gallons per minute of chloride containing waste water into Hills Creek. The company estimates that the chlorides contained in the waters to be pumped from this mine will average 5,000 to 20,000 milligrams per liter, and you say this will result in the total loss of fish and aquatic habitat in Hills Creek. Hills Creek is a small stream approximately 7 miles long

<sup>1</sup> C.L.S. 1961, § 323.8, as amended by P.A. 1965, No. 405 M.S.A. 1968 Cum. Supp. § 3.528.