"(2) whether the facility is so situated physically as to give a bank a material competitive advantage in securing customers.

"In order to determine the presence or absence of these two often unarticulated factors, courts have considered certain data relevant. These have included (1) the distance separating the facility from the existing bank office, (2) the number of intervening structures, (3) the lack of physical connection, such as by pneumatic tubes, between the facility and the existing bank office, and (4) the economic effect of the facility on the balance of competition between competing banks. *See, e.g., Jackson* v. *First National Bank of Valdosta, supra; Dunn* v. *First National Bank of Cartersville, supra; North Davis Bank* v. *First National Bank of Layton, supra.* Other factors this court has considered relevant to this case are (1) whether it was feasible for an existing bank office to physically attach the drive-in windows to the existing office, and (2) whether the freestanding facility could have been constructed closer to the existing bank office. *In making these determinations, no single factor impresses this court as controlling; nor do any hard and fast rules concerning such factors as distance of separation recommend themselves. Only after considering all the relevant factors and circumstances peculiar to this case has this court determined that the defendant's drive-in facility does not constitute a 'branch'.*" pp 573-574 (emphasis added)

The above cases lead me to conclude that a bank may construct an extension facility without having the additional structure licensed as a branch unless the extension allows the bank to serve a new geographical area or to acquire a material advantage over its competitors.

FRANK J. KELLEY,
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TAX ASSESSMENTS: Church property

A building and land occupied and used by a church as a house of public worship must be owned by the church to be exempt from ad valorem taxes.

Opinion No. 4939 January 29, 1976.

Honorable Donald E. Bishop
Michigan Senate
Capitol Building
Lansing, Michigan 48901

You have asked for my opinion on the following question:

"Must a building and land occupied and used by a church as a house of public worship be owned by the church to be exempt from taxation under MCLA 211.7?"

Const 1963, art 9, § 4 provides:

"Property owned and occupied by nonprofit religious or educational organizations and used exclusively for religious or educational pur-

poses, as defined by law, shall be exempt from real and personal property taxes."

Exemption from taxation for houses of public worship and parsonages is provided in the General Property Tax Act, 1893 PA 206, as amended, § 7, MCLA 211.7; MSA 7.7, with the following language:

"The following property shall be exempt from taxation:

* * *

"Fifth, all houses of public worship, with the land on which they stand, the furniture therein and all rights in the pews, and also any parsonage owned by any religious society of this state and occupied as such."

OAG 1930-1932, p 139 (March 2, 1931) held that the interest of a land contract vendee is a sufficient interest to qualify the vendee church as owner of the property for tax exemption purposes. The State Tax Commission, administrator of property tax laws, has consistently taken the position that church ownership is a prerequisite to exemption from ad valorem taxation. Furthermore, there are no reported cases holding that church ownership is not a prerequisite to taxation.

In view of this practice, the Constitutional Convention of 1961 may be assumed to have been aware that the tax exemption statute regarding religious organizations had been consistently interpreted to require ownership by a religious organization to exempt its property from taxation. The comments regarding Const 1963, art 9, § 4, which infer ownership of property by the religious organizations seeking exemption further indicate that the members of the convention understood that they were incorporating the terms and conditions of the statutory exemption into the constitution.

The official records of the Constitutional Convention indicate that a debate was held on the question of a constitutional provision providing for tax exemption of religious property. After a decision was made to grant the tax exemption, the debate then turned to the question of which non-profit organizations should be granted constitutionally exempt status.

In the course of the debates, it became clear that the framers assumed that Michigan property tax laws then exempted from taxation certain real and personal property *owned* by religious, charitable and educational institutions. This is illustrated by the following statement made by Mr. DeVries:

"Michigan's property tax laws now exempt from taxation certain real and personal property owned by religious, charitable and educational institutions. The adoption of this amendment by the committee would give constitutional status to the exemptions that are now provided by statute. The statutory exemptions to charitable and educational organizations are properly justified, I feel, on the grounds that these institutions supply necessary services which the state would have to provide if they were not provided by these institutions. The exemption for religious organization is based upon the wise judgment that morality is necessary for the stability of government and religious organizations directly advance morality and thereby further the welfare of this state.

"The same reasons which justify statutory exemptions are even more valid in support of constitutional exemptions. The constitution properly should concern itself with fundamental things. Protection of religious, educational and charitable institutions from taxation guarantees that the people's wholesome interest in these areas will not be encroached upon by any future legislative action. Constitutional status to these exemptions is consistent with the historical concern of the people that religious, educational and charitable institutions be encouraged and advanced whenever possible. I think that most of you are aware of the periodic attempts to pressure the legislature into discontinuing these worthwhile exemptions. Should such an attempt succeed, it would seriously affect the work of these now exempt institutions. While we do not believe that the legislators now in office will yield to attacks on these exemptions, it does not follow that some legislature in a future time might not use the power to tax to harass these institutions."[1]

Ultimately, although the committee on taxation recommended that tax exempt status be granted to property *held* by religious, educational and charitable organizations, after debate[2] the framers of the constitution supported the adoption of an amendment to substitute the word "owned" for the word "held."

Thus, the Michigan constitution makes ownership by the religious organization a prerequisite to exemption. A previous opinion, cited in your request and found at OAG 1939-1940, p 512 (May 23, 1940), that a land contract vendee's interest in the property is sufficient ownership to qualify for the exemption is unaffected by the new constitutional provision embodied in Const 1963, art 9, § 4, and the opinion remains valid.

In response to your question, I conclude that the building and land occupied and used by a church as a house of public worship must also be owned by that church in order to be exempt from taxation. Further, a land contract vendee is considered to be an owner for property tax exemption purposes.

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Attorney General.

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[1] Official Record, Constitutional Convention 1961, p 897.
[2] Official Record, Constitutional Convention 1961, p 2645.