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BANKS AND BANKING: Banking Hours

SAVINGS AND LOAN ASSOCIATIONS: Hours of Operation

A bank or savings and loan association may operate on Sundays if its bylaws are appropriately amended. A bank or savings and loan association, under certain conditions, may open some of its offices on Sunday while others remain closed.

A bank or savings and loan association may establish its own hours of Sunday operation providing such hours are reasonable and public notice is given. A bank or savings and loan association, under certain conditions, may close on a secular day, other than Saturday.

Opinion No. 4958

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You have asked me the following questions regarding banks and savings and loan associations:

1. May a bank or savings and loan association legally open for business on Sundays?
 - a. Assuming the legality of Sunday opening, must the Board of Directors of the bank or savings and loan association adopt a formal resolution and/or by-law amendment?
 - b. If a bank or savings and loan association opens for business on Sundays, must all of its branches also be open?
 - c. Is there any limitation as to the number of hours that a bank or savings and loan association may be open for business on Sundays?
2. Are banks and savings and loan associations required by law to be open for business on all secular days?

Banks and savings and loan associations have historically closed on Sunday because of the Sunday Observance and Sunday Contracts Statutes, 1846 RS 43, MCLA 435.1 *et seq*; MSA 18.851 *et seq*, rep. 1962 PA 127. The statutes had the effect of prohibiting all business activity on Sunday, except works of charity or necessity, and rendering absolutely void any contract entered into on Sunday. Although modified through the years, the act was not totally repealed until 1974. See 1974 PA 171. In conjunction with the aforementioned statutes, the Legislature enacted the Legal Holiday Statute, 1865 PA 124, as amended by 1974 PA 9, MCLA 435.101; MSA 18.861, which designates certain days as holidays and declares that these days be treated as Sundays. Although the original effect of prohibiting business on such holidays has been rendered nugatory, the act provides:

"The following days namely . . . 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 . . . shall be treated and considered as the first day of the week, commonly called Sunday . . . all bills, checks, and notes otherwise presentable for acceptance of [sic] payment on any of the days shall be deemed to be payable and presentable for acceptance or payment on the next secular or business day . . ."

This provision, affecting the payment and presentment of negotiable instruments falling due on Sundays and holidays, was necessary to protect banks and savings and loan associations from liability for the wrongful dishonor of such instruments and also the holders of such instruments for failure to make presentment on a designated date. This protection has been expanded by Section 3503(3) of the Uniform Commercial Code, 1962 PA 174, § 3503(3), MCLA 440.3503(3); MSA 19.3503(3), which provides:

"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."

Examination of the Michigan Banking Code, 1969 PA 319, MCLA 487.301 *et seq*; MSA 23.710(1) *et seq*, and of the Savings and Loan Association Act, 1964 PA 156, MCLA 489.501 *et seq*; MSA 23.540(101) *et seq*, discloses that neither act contains a provision dealing with hours or days of operation. Several leading treatises on the subject conclude that banks, like other forms of business, may establish any reasonable hours for the transaction of their business. See 5 Zollman, *Banks & Banking*, § 2691, p 16; 4 Mitchee, *Banks & Banking*, § 6, p 14.

Inasmuch as the Legislature has not limited the days or hours during which financial institutions may open for business, the answer to your first question is that banks and savings and loan associations, like other forms of business, may operate on Sundays. However, it must be recognized that there is a close relationship between the safe and sound operation of these institutions and the economic welfare of the citizens of this State. The unlimited and uncontrolled operations of banks and savings and loan associations with respect to hours of operation may adversely affect smaller independent banks and savings and loan associations which are unable to compete. This problem should be closely examined by the Financial Institutions Bureau as well as the Legislature to determine if remedial action is necessary.

With regard to your second question, Section 151(6) of the Banking Code, 1969 PA 319, § 151(6), MCLA 487.451(6); MSA 23.710(151)(6), provides that a bank shall have the power:

"To make, alter, amend and repeal bylaws not inconsistent with its articles or with law for the administration and regulation of the affairs of the bank."

Similarly, Section 205 of the Savings & Loan Association Act, 1964 PA 156, § 205, MCLA 489.605; MSA 23.540(205), provides that a savings

and loan association shall adopt bylaws for the regulation and management of its business. Since opening on Sunday would be a significant change in the normal and traditional operation of the affairs of such institutions, it would be my opinion that before a bank or savings and loan association open for business on a Sunday, its bylaws must be appropriately amended.

In response to your third question, I refer to OAG 1969-1970, No 4659, p 14 (January 13, 1969), which dealt with the question of whether a bank was obligated to open its main office on any day on which any of its branches were open. That opinion analyzed the question with respect to two considerations:

“ . . . 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.” p 14

The opinion concluded that based on Section 4106 of the Uniform Commercial Code, 1962 PA 174, § 4106, MCLA 440.4106; MSA 19.4106, which designates each bank branch as a separate bank for the purposes of articles 3 and 4 of the Uniform Commercial Code, 1962 PA 174, *supra*, a bank could properly open some of its branches on Saturday and not its main office providing adequate precautions against unsafe and unsound banking practices are taken and the bank makes available its central book-keeping department for information purposes whenever any branch is open. Similarly, I would conclude that a bank or savings and loan association could open any or all of its offices on Sunday providing similar conditions are met.

In response to your fourth question, I find no statutes or cases which control the number of hours a financial institution must remain open. In the absence of such, it is my opinion that each institution may establish its own hours of Sunday operation providing such hours are reasonable and public notice is given.

In answer to your final question concerning whether banks and savings and loan associations may voluntarily close on secular days, other than Saturday, I again note that there are no Michigan statutes dealing with the days such financial institutions must remain open for business. Again, the answer depends on what possible liability a bank may incur for failure to honor the presentment of a negotiable instrument and the protesting and giving notice of dishonor of bills of exchange, bank checks, and promissory notes and also on the effect such closing may have on the safety and convenience of the public.

Under the Uniform Commercial Code, the failure to make timely presentment or to give notice of dishonor of a negotiable instrument may result in the discharge of all endorsers and the drawer of an instrument. See 1962 PA 174, § 3502, MCLA 440.3502; MSA 19.3502. In addition, the wrongful dishonor of an instrument by a bank will render the bank liable to its customer for any damages incurred therefrom. See 1962 PA 174, § 4402, MCLA 440.4402; MSA 19.4402. However, as I have previ-

ously pointed out, Section 3503(3) of the Code, *supra*, provides that any presentment due on a day which is not a full business day shall be deemed due on the succeeding business day. Similarly, with respect to giving notice of dishonor, the Uniform Commercial Code computes the time requirement of a bank based on the days which the bank is open to the public. See 1962 PA 174, §§ 3508(2), 4104(1)(h), 4104(1)(c); MCLA 440.3508(2), 440.4104(1)(h), 440.4104(1)(c); MSA 19.3508(2), 19.4104(1)(h), 19.4104(1)(c).

The public has a right to expect that banks and savings and loan associations with which they do business will be open at reasonable hours for the transaction of necessary business. The courts have recognized that banks and other financial institutions are charged with a public trust which makes their regulation and operation unique. See *Commissioner of Banking v Berry*, 27 Mich App 271, 306; 183 NW2d 436, 452 (1970). At 1 OAG 1955-1956, No 2285, p 763 (December 22, 1955), the Attorney General determined that the reasonable hours for the conduct of the business of a bank may vary between communities. In deciding that banks may close on the afternoons of secular days, the opinion held:

“ . . . 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 established 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.” p 767

In a related opinion, OAG 1947-1948, No 716, p 611 (March 31, 1948), the Attorney General ruled that in the absence of any prohibitory language, a bank could voluntarily close and suspend their banking activities during Saturdays. Therefore, in answer to your final question, it is my opinion that a bank or savings and loan association may close on a secular day, other than Saturday providing: (1) appropriate bylaw amendments are made; (2) the institution specifically contracts with its depositors to close; (3) reasonable public notice is given; (4) the institution maintains reasonable hours and days of operation in order that the public may be able to transact necessary business; and (5) if the institution closes some of its offices, but keeps others open, notice of which offices are open must be conspicuously displayed in order that any necessary presentment or notices may be made with regard to negotiable instruments.

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