

THE ATTORNEY GENERAL OF TEXAS

Austin 11, Texas

Honorable Lee Brady, Commissioner State Department of Banking Austin, Texas

Dear Mr. Brady:

Opinion No. O 2691
Re: Corporate power of Del Rio
Bank and Trust Company to
acquire certain property
as a banking house.

We have your request of August 30th, 1940, asking for an opinion of this department with respect to the corporate power of the Del Rio Bank and Trust Company of Del Rio, Texas to acquire certain property as a banking house.

Article 512 of the Revised Civil Statutes pertinent to your inquiry is as follows:

"No State bank or bank and trust company shall invest more than fifty per cent of the capital stock and permanent surplus in its banking house, nor more than fifteen per cent of its capital stock and permanent surplus in the furniture and fixtures to be used in its said banking house, unless said corporation shall have first applied to the State Banking Board and received written permission to make a larger investment than is allowed hereunder, which written permission shall be entered upon the minutes of a regular meeting of said banking corporation."

It will be seen the only limitation of the statute upon the amount to be invested by a State bank in its banking house shall not be more than fifty per cent of its capital stock and permanent surplus of the bank. We understand from yo r letter that the proposed purchase does not exceed this amount.

Of course a bank may not speculate in real estate. It is no part of its corporate purpose. It may acquire directly such real estate as may be reasonably necessary in conducting its banking affairs, but no more. It may acquire real estate, however, not at all necessary in the transaction of its business, when such acquisition is made in the process of collecting debts due to it or in other words when such acquisition is incidental merely to a transaction of its major corporate business — that of banking. (See Articel 415, Revised Civil Statutes.)

Such an institution, however, is expressly, or at least by necessary implication, authorized to acquire real estate for its banking house purposes.

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If the property is being purchased by the bank for the good faith purpose of a banking house, the law isnot concerned with the character of the building, its structural peculiarities, the number of stories, the number of separate rooms or offices, and the like; these are matters for the sound husiness discretion of the Board of Directors. It would be difficult to find a building which had not been built to specifications for a bank that would in all respects be exactly fitted to the demands of a bank purchasing the same. Indeed, it might be difficult to construct a building to specifications suited only to the present needs but to the future needs of a bank undertaking to construct its own banking house. In the present case, surplus rooms, stories, offices and the like, it appears, may be profitably rented by the bank. We cannot close our eyes to the fact that in many instances -- perhaps in most instances -- our better banks occupy their own buildings consisting of several, sometimes many stories, and much, if not most of the floor space is not actually used by the bank in conducting its banking business but is rented out. There can be no walid objection to this if the major good faith purpose of the acquisition or construction of the building be to provide a banking house for the institution.

Under the facts detailed by the bank in its letter which accompanies your request, it is the opinion of this department that the bank does have the corporate power to purchase the building as it proposes to dowithout violating in any manner Article 512 of our statutes or any other statute or decision regulating such matters.

It would be advisable however for the Banking Commission to approve the contract under Article 512 of the Statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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/s/ Ocie Speer

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APPROVED SEP 4, 1940
/s/ GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

APPROVED
Opinion Committee
By B W B
Chairman