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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

OPINION NO. 85-120

May 28, 1985

Marlin Jackson
Bank Commissioner
One Capitol Mall - 6D305
Little Rock, Arkansas 72201

Dear Commissioner Jackson:

This is in response to your request for an opinion regarding Ark. Stat. Ann. § 67-2114(c).

Your first question is:

How should consideration of each class of applications be made in determining which prospective bidders for a failed institution should prevail?

Opinion #85-51, a copy of which is enclosed, addresses the application of the priorities set forth in §67-2114(c).

Your next question is:

Whether an acquiring bank located outside the county in which a failed bank is located may acquire the failed institution according to Ark. Stat. §67-2114 and operate the failed institution as a branch of the acquiring institution?

The provisions of Ark. Stat. Ann. §67-2114 apply only to emergency situations where there is a necessity to transfer the assets of a bank on a very rapid basis. These provisions may conflict with other provisions of the State Banking Law but should prevail because of the emergency situation involved in such a transfer.

Accordingly, while a bank cannot in ordinary situations establish a branch outside the county where its main office is located, Ark. Stat. Ann. §67-360(d), a reasonable interpretation of §67-2114 appears to permit the operation of a

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failed institution as a branch of a bank located in another county. Such a construction should be in the public interest by improving the terms of bids for the failed bank and does not conflict with §67-360(d) which is limited to establishment of branches in the ordinary course of business. This intent in §67-360 is further demonstrated by its 1985 amendment in Act 103 which permits branches outside the county where the facility to be operated as a branch was formerly a bank and which was closed by order of the State Banking Commission or Comptroller of the Currency.

This opinion, which I hereby approve, was prepared by Assistant Attorney General Thomas S. Gay.

Sincerely,



STEVE CLARK
Attorney General

JSC:TSG:jk