Illinois Savings and Loan Facilities: An Alternative to Branching

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ILLINOIS SAVINGS AND LOAN FACILITIES:
AN ALTERNATIVE TO BRANCHING

Branching by savings and loan associations has grown hand-in-hand with the rise of these institutions to the status of the nation's second largest financial intermediary. While the past decade in particular has seen enormous growth in the use of branch operations, Illinois has maintained a prohibition against branching by state-chartered associations. Essentially, a branch is a separate and complete banking or savings and loan establishment conducting general banking business in a location apart from a main office of a bank or savings and loan. While the branch represents a separate physical entity, it is not a separate legal entity. It is instead the operation of one banking institution as the instrumentality of another, in which the relationship between them is such that they operate as a single unit.

On its face, branching would appear to be a beneficial operation for all concerned. Theoretically, it provides the savings and loan customer with a more convenient location at which to transact savings and loan business. At the same time, it provides the savings and loan asso-

1. Gross savings receipts of all operating associations increased from $125.9 billion in 1974 to $218.3 billion in 1977. Total loans closed increased from $38.9 billion to $107.4 billion between 1974 and 1977. Zabrenski, S & L Branching: A Decade of Change, FED. HOME LOAN BANK BD. J. at 38, 40 (August 1978) [hereinafter referred to as the August FHLBB Journal]. Accompanying this enormous growth during the 1970's, the number of branches has similarly increased dramatically from 7,197 in 1967 to 16,439 in 1977. Id. at 14.

2. The sharp increase in branches of savings and loan associations led one economist of the Office of Economic Research of the Federal Home Loan Bank Board to label the last decade "the age of branching." Id. at 13.

3. ILL. REV. STAT. ch. 32, § 709(b) (1977). All references to Illinois Revised Statutes, chapter 32, sections 701-944, in this note are to provisions of the Illinois Savings and Loan Act. The legislative history of the Illinois Savings and Loan Act is considered in detail in the text accompanying notes 28-34 and 48-50 infra. The Act applies to state savings and loan associations formed under and subject to the rules of the Act. In contrast to these state associations are federal savings and loan associations. A federal association is defined as a "savings and loan association incorporated under the Home Owner's Loan Act of 1933, [12 U.S.C. §§ 1461-1470 (1976)] as now or hereafter amended, whose principal business office is located within this State." ILL. REV. STAT. ch. 32, § 710.07 (1977).


5. Application of Summit & Elizabeth Trust Co., 111 N.J. Super. 154, 268 A.2d 21, 26 (1970). A branch is operated by the legal entity which operates the main savings and loan office. As such, it has no separate board of directors or capital structure. Its deposits are pooled with the capital structure of the main office. Id.

6. In re Application for Formation of Cleveland Trust Co. of Lake County, 38 Ohio St. 2d 183, 311 N.E.2d 854, 859 (1974). In distinguishing between independent banks and branches, the court adopted the "unitary operations test." Under this test, branching existed only where the "branch" involved was doing business with and through the main banking office as one unit. Id.
cation with access to new markets and access to additional savings dollars. However, in reality there has been considerable controversy over branching, particularly as it relates to competition between associations. Proponents of branching argue that in addition to providing better service to customers through more convenient locations, branching can create greater competition among savings and loan associations in a given area, thereby putting downward pressure on prices. Additionally, branching may permit savings and loan associations to enjoy certain economies of scale. To the extent associations realize cost saving economies in relation to size, there is further downward pressure on prices.

Those opposed to branching foresee rising prices as a result of branching. They contend that branching leads to a concentration of financial facilities in a given area. As the number of institutions contracts, each association present in an area exerts a greater degree of

7. Savings and loan associations might establish locations at a considerable distance from the main office which are closer to new residential areas, for instance, without upsetting the operations at the main office. In so doing, the association may attract customers who might not have normally saved or borrowed from the main office.

8. See Comment, Lyons Savings and Loan Association v. Federal Home Loan Bank Board, 51 CHI.-KENT L. REV. 656 (1974) [hereinafter referred to as Comment]. Savings and loan associations have traditionally had two main services—savings deposits and home mortgage financing. Id. at 667. It is, of course, access to savings dollars that permits savings and loan associations to carry on the true profit-yielding operation of making loans.


10. Comment, supra note 8, at 668-69.

11. Here, price refers to the cost of borrowing money, i.e., interest rates.

12. Economies of scale refers to lower average costs which arise as a firm increases its size.

R. HEILBRONER, THE ECONOMIC PROBLEM at 109-10 (3d ed. 1972) [hereinafter referred to as HEILBRONER. The existence of economies of scale can arise from the presence of any of a number of factors:

(1) Certain costs may remain constant or fixed. As output is increased, these fixed costs are distributed over a greater number of units and per unit costs are consequently lowered. Id. at 109.

(2) “Purchasing economies,” such as quantity discounts, may be obtained as a firm increases its size. This also may serve to lower per unit costs.

(3) The firm may benefit from specialization of labor and capital.

(4) There tends to be a reduction in risk associated with large assets (i.e., stabilization of deposit flow). Brigham and Petit, Effects of Structure on Performance in the Savings and Loan Industry in 3 A STUDY OF THE SAVINGS AND LOAN INDUSTRY 971, 1003 (I. Friend ed. 1969).

As costs are lowered, profits will increase. Increased profits can lead to further expansions in size, thereby triggering greater profits. As the process is repeated, the firm can grow larger and larger and become more dominant in the market. Thus, while economies of scale may reduce prices, there is also the potential for a concentration of associations and the emergence of some institutions dominating the market. Comment, supra note 8, at 668.

13. “Opponents of branching argue that a fully developed branch banking system will tend to concentrate resources in the hands of a few banks. This concentration is said to lead to a decrease in general economic activity. . . .” CBCT’s and the McFadden Act, supra note 9, at 385.
market power which can approach monopoly proportions.\textsuperscript{14} Where monopoly practices exist, the monopolist is able to raise prices to artificially high levels, thereby reaping “monopoly profits.”\textsuperscript{15} Additionally, the monopolist association may be able to discriminate as to prices.\textsuperscript{16} Evidence exists that would tend to support the contentions of both the pro-branching and anti-branching factions. Economies of scale have been shown to exist for savings and loan associations.\textsuperscript{17} On the other hand, there has been a definite contraction in the number of associations operating in Illinois since the rise of branching.\textsuperscript{18}

The present controversy has arisen out of the quest for new markets and increased savings dollars. The Federal Home Loan Bank Board\textsuperscript{19} urges associations to compete aggressively for a share of the savings market and to accelerate their movement into new market areas. The FHLBB warns that associations can effectively compete with other financial institutions only if they pursue a customer-oriented branching policy.\textsuperscript{20} “If associations do not have branch offices . . . [t]hey will be at a competitive disadvantage in the growing struggle for the savings dollar.”\textsuperscript{21}

14. A “pure” monopoly situation exists when a firm is the sole supplier in an industry. Where there is a contraction in the number of savings and loan associations in a given market area, such a monopoly situation can develop. W. Sloys & R. Burton, Microeconomics at 320-46 (1972) [hereinafter referred to as Microeconomics].

15. As the number of suppliers decreases, the availability of substitute goods and services decreases. When substitutes become nonexistent, the monopolist can effectively set its own prices. Since there is no one in the market who can compete with the monopolist as to price, the monopolist can set prices at any level that it desires. Microeconomics, supra note 14 at 320-46. As a result, monopoly power imposes two burdens on society. It sells goods at a higher price than that of a competitive firm, and its output is smaller than would be the case under competitive conditions. The consumer receives less and pays more for it. Heilbroner, supra note 12, at 554.

16. Since, in a monopoly situation, the monopolist controls the market price, it can effectively set different prices for different consumers. By discriminating in this manner, the monopolist can affect the allocation of resources. In the context of a savings and loan, this means that the monopoly association can determine which groups receive loan priority. Microeconomics, supra note 14, at 320-46. For example, it is claimed that branches make loans on the basis of “collateral” rather than “character,” thereby ignoring the small business. CBCT’s and the McFadden Act, supra note 9, at 385. To place such power in the hands of savings and loan associations may prove detrimental to society and therefore undesirable.


18. The total number of FSLIC-insured savings and loan associations declined from 4,471 in September 1967 to 4,061 in September 1977, a decrease of 410. In Illinois, during this same period, the number of associations fell from 470 to 393. August FHLBB Journal, supra note 1, at 14. (FSLIC-insured refers to savings and loan associations which are insured by the Federal Savings and Loan Insurance Corporation. The insurance is available to both federal and state associations.)

19. Hereinafter referred to as the FHLBB. The FHLBB governs and sets rules for federally chartered savings and loan associations.


21. Id. at 15.
As a result of this line of reasoning, the FHLBB authorized branching by federal associations in Illinois in spite of the statutory prohibition against branches.\(^2\). With the rise of federal savings and loan branches in Illinois,\(^2\) state-chartered institutions have argued the need for greater flexibility in establishing new offices apart from the principal business office. To deny state associations this right, it is argued, is to foster a competitive disadvantage for the state associations.

The need has been met at least in part by statutory provisions permitting the establishment of "facilities."\(^2\) Facilities are offices, separate from the main office, which receive deposits; accept and issue checks, drafts and money orders; change money; process mortgages; and receive payments on existing indebtedness.\(^2\) Facilities, like branches, have been used increasingly in the 1970's.\(^2\)

It is this growth of facilities as a reaction to branching by federal associations that will be the focus of this article. The primary inquiry will be whether the use of facilities by state associations has effectively closed any competitive disparity with federal associations that may have existed due to the federal savings and loan institutions' right to branch. In considering these reactions, important clues to the future

22. ILL. REV. STAT. ch. 32, § 709(b) (1977) provides, in pertinent part:

No association shall establish branches or offices at which savings or investments are regularly received or loans approved unless and to the geographic extent branch powers and offices are granted to state banks. . .


23. In September of 1967, there were 470 FSLIC-insured savings and loan associations in Illinois. Since this was before the FHLBB authorization of branches, there were no branches. By September of 1977, there were 429 full branches, 32 limited facilities, and 15 satellite offices, but the number of associations fell to 393. There were at that time 2.21 offices per association. August FHLBB Journal, supra note 1, at 14-15. FSLIC-insured associations take in 98.25% of all gross receipts for all operating associations. Id. at 38.

24. ILL. REV. STAT. ch. 32, § 709(b) (1977).

25. ILL. REV. STAT. ch. 32, § 709(c) (1977).

course of branches or facilities in Illinois can be ascertained.\textsuperscript{27}

As a starting point, the state legislation of the early 1970’s and the decision by the FHLBB creating the disparity in branching powers by federal and state associations will be considered. This will establish the background against which the more recent legislation and judicial decisions that gave rise to increased facility use were made. The emphasis will then shift to an analysis of the reaction to this disparity by the legislature, courts, and Commission of Savings and Loans in Illinois, and to the development of facilities as an answer to federal branching.

**Creation of a Problem: The Rise of Branching by Federal Associations in Illinois**

Illinois prohibits branching for its state-chartered savings and loan associations.\textsuperscript{28} Prior to 1971, Illinois law prohibited any savings and loan associations from establishing any branches or offices unless similar opportunities were afforded to banks.\textsuperscript{29} At that time, as now, branching by banks was similarly banned.\textsuperscript{30} The combined effect has been to totally prohibit any branching by such financial institutions.

In 1971, the statute was amended to provide an exception to this effective total ban by enabling the Commission of Savings and Loan Associations\textsuperscript{31} to adopt regulations permitting the establishment of a facility in the case of merger or a single facility in the case of relocation.\textsuperscript{32} This mandate was further modified to allow the operation of a facility created by consolidation or bulk sale.\textsuperscript{33} Thus, in the early portion of the decade, the legislature and Commissioner moved away from a strict policy against branches. While the statutory language still expressly forbade the establishment of “branches,” an approximate equivalent could be effectuated in limited situations through the establishment of a facility.\textsuperscript{34}

27. See text accompanying notes 96-130 infra.
28. Ill. Rev. Stat. ch. 32, § 709(b) (1977). The reason for the prohibition undoubtedly was the traditional concept of savings and loan associations as neighborhood savings and mortgage-lending institutions. Comment, supra note 8, at 657. The fears of concentration and anti-competitive effects have combined to continue the prohibition to the present.
   No bank shall establish or maintain more than one banking house, or receive deposits or pay checks at any other place than such banking house, and no bank shall establish or maintain in this or any other state of the United States any branch bank . . . .
31. Hereinafter referred to as Commissioner.
34. Ill. Rev. Stat. ch. 32, § 709(c) (1975) provides:
   No business shall be done at a facility except receiving deposits, cashing and issuing
While Illinois has continued to maintain a prohibition against branching by state-chartered associations, the Federal Home Loan Bank Board has authorized branch operations for Illinois-based federally chartered associations since 1973.\textsuperscript{35} The authorization was based on a study that showed "a multiplication of state approved savings and loan banking facilities and the existence of substantial affiliate banking operations in Illinois."\textsuperscript{36} In \textit{Lyons Savings \\& Loan Association v. Federal Home Loan Bank Board},\textsuperscript{37} the United States District Court for the Northern District of Illinois found that the proliferation of state-approved facilities created a distinct disadvantage for federal savings and loans.\textsuperscript{38} In \textit{Lyons}, state savings and loan associations in Illinois challenged the FHLBB authorization of new branches by federal associations in Illinois in the face of the statutory prohibition.\textsuperscript{39} The associations also challenged the constitutionality of providing greater branching powers to federal savings and loans than were available to state-chartered associations.\textsuperscript{40}

The \textit{Lyons} court followed prior decisions permitting such branching by federal associations and upheld the FHLBB authorization. The court emphasized that the plenary discretionary powers granted the FHLBB necessarily included the authority to approve branch applications.\textsuperscript{41} Since federal regulations preempt state law, in giving the FHLBB these plenary powers, Congress must have intended that the FHLBB had authority to permit new branching by federal savings and loans in Illinois. Finally, the court found that "no exact parity between state and federal savings and loan associations is either required or necessarily intended."\textsuperscript{42} Thus, the court dismissed the contention that

\begin{itemize}
  \item checks, drafts and money orders, changing money, processing mortgages and receiving payments on existing indebtedness.
\end{itemize}

The functional equivalence of "facilities" and "branches" is discussed in the text accompanying notes 96-130 infra.


\textsuperscript{37} \textit{Id.}

\textsuperscript{38} \textit{Id.}

\textsuperscript{39} \textit{Id.} at 11.

\textsuperscript{40} \textit{Id.} at 15.

\textsuperscript{41} \textit{Id.} at 16.

\textsuperscript{42} \textit{Id.} at 18. The \textit{Lyons} court noted that, unlike the National Bank Act, 12 U.S.C. § 36(c) (1976) (which tied branching policies of national banks directly into each state's laws), the HOLA directs the FHLBB to give primary consideration to the best practices of institutions in the United States. 12 U.S.C. § 1464(a) (1970). This language, the court held, left to the FHLBB's discretion the determination of what "best practices" are and how they ought to be implemented on a nationally uniform basis. The fact that a particular state, such as Illinois, had not adopted an FHLBB-approved "best practice" for its state associations cannot limit the FHLBB's authority to...
branching by federal associations in Illinois created an unconstitutional disparity in rights.\textsuperscript{43}

The decision in \textit{Lyons} opened the door for branching by federal savings and loan associations in Illinois. In so doing, the court created a problem for the state associations. While the court had concluded that the disparity in branching rights was not unconstitutional,\textsuperscript{44} the state associations were concerned that on a practical level such disparity would give an unfair competitive advantage to federal savings and loan associations.\textsuperscript{45} If the fears of the state associations were justified, their federal counterparts would have a significant advantage in access to savings dollars. There would then be the potential for state associations to either be “squeezed out” of the market or severely hampered in their ability to operate.\textsuperscript{46}

\textbf{Facilities: An Answer to the Problem}

Following \textit{Lyons}, there has been scant litigation and little legislative action with regard to such branching by federal savings and loan associations in Illinois.\textsuperscript{47} Reaction to the use of branches by federal associations has come in the form of expanded use of facilities by state associations.

In 1975, the Illinois legislature further amended the Illinois Savings and Loan Act.\textsuperscript{48} The amended statute provided that:

No association \textit{may} [shall] establish branches or offices at which savings or investments are regularly received or loans approved unless and to the geographic extent branch powers and offices are granted to state banks under the ‘Illinois Banking Act,’ as amended, or as it may be amended or supplemented, except the Commissioner may adopt regulations which provide for the establishment of facilities, [a facil-

\textsuperscript{43} Id. at 18. Since no parity was required and the FHLBB was within its constitutional authority in permitting branches, there was apparently no constitutional problem with the resulting disparity in branching rights.

\textsuperscript{44} Id. at 19-21.

\textsuperscript{45} Id. at 19.

\textsuperscript{46} The competitive and anti-competitive aspects of branching are discussed in Comment, supra note 8, at 656. The issues are also considered in the text accompanying notes 113-29 infra.

\textsuperscript{47} Since \textit{Lyons}, the only change to the statutory provisions concerning facilities was in ILL. REV. STAT. ch. 32, § 709(b) (1977). See text accompanying notes 48-50 infra. The two main cases in which Illinois courts have considered the branching and facility provisions of the statute are Skokie Fed. Sav. & Loan Ass'n v. Illinois Sav. & Loan Bd., 61 Ill. App. 3d 977, 378 N.E.2d 1090 (1978) and Security Sav. & Loan Ass'n of Hillsboro v. Griffin, 56 Ill. App. 3d 903, 372 N.E.2d 1118 (1978).

\textsuperscript{48} ILL. REV. STAT. ch. 32, §§ 701-944 (1977).
ity] as defined by the Commissioner, in the case of mergers, consolidations [a supervisory merger, consolidation] or bulk sales [sale]; or, facilities [a single facility] in the case of relocations [a relocation].

The amendment effectively pluralized the provisions of the section, thereby permitting more than one facility arising out of certain transactions such as mergers, consolidations, bulk sales, and relocations.

Somewhat ironically, the cases challenging the amendment have been brought by federally-chartered savings and loan associations seeking judicial determination of whether the establishment of facilities violated the existing statutory prohibition against branches and the extent to which the Commissioner could adopt regulations providing for the establishment of facilities.

Both of these questions were addressed in Security Savings & Loan Association of Hillsboro v. Griffin. In that case, several federal savings and loan associations contended that section 709(b) violated a provision of the Illinois constitution that prohibited branch banking unless approved by a three-fifths vote of the Illinois General Assembly. The Illinois appellate court disagreed, noting that the statute draws a sharp distinction between a branch and a facility. According to the court, this interpretation of the appellant federal savings and loan associations would “nullify the last clause in the statute giving the Commissioner

49. ILL. REV. STAT. ch. 32, § 709(b) (1975). The language added by the amendment is italicized here, while the language deleted from the statute appears in brackets.

50. A merger is defined in the Illinois Savings and Loan Act as including consolidations. ILL. REV. STAT. ch. 32, § 710.12 (1977). For purposes of this note, the two may be regarded as equivalent. Bulk sales involve the sale of all, or nearly all, of an association’s assets. In other words, bulk sales are transactions not in the usual and regular course of business in which an association sells all of its assets to another association in consideration of money, capital, or obligations of the purchasing association. ILL. REV. STAT. ch. 32, § 820 (1977). The subtle distinctions between mergers, consolidations, and bulk sales are not important for the purposes of this article. The importance of these transactions is that they involve the combination of two or more separate savings and loan associations into one entity that continues the operation of the association. The Illinois statute provides:

The continuing association shall be considered the same business and corporate entity as each merging association, with all the property, rights, powers, duties, and obligations of each merging association.

ILL. REV. STAT. ch. 32, § 819 (1977). That is, one association is absorbed into another with one continuing association which may operate in the two or more locations of the original institution. Relocations differ substantially from mergers, consolidations or bulk sales; relocation accompanies a savings and loan association’s decision to move its main office. When done with the approval of the Commissioner, pursuant to the statute, the association will be allowed to utilize the original main office as a facility. Theoretically, by a series of relocations of its “main office,” an association could create an infinite number of facilities. In practice, the Commissioner can terminate any such scheme by withholding approval for continued use of the former main office.


52. ILL. CONST. art. XIII, § 8 provides:

Branch banking shall be authorized only by law approved by three-fifths (of the majority) of the members voting on the question or a majority of the members elected, whichever is greater, in each house of the General Assembly.
power to establish regulations for facilities. The case at bar deals with a facility, not a branch."

In so holding, the court clearly enunciated the constitutionality of the establishment of facilities. Perhaps more importantly, the court demonstrated that facilities were to be distinguished from branches. This cleared the way for expanding the use of facilities without violating the branching laws, even as facilities began to approximate branches.

Having affirmed the constitutionality of facilities, the Griffin court went on to consider the extent of the Commissioner's power to adopt regulations pertaining to those facilities. The plaintiff, Security Savings & Loan of Hillsboro, argued that section 709(b) permitted an unconstitutional delegation of power to the Commissioner. The court disagreed, holding the delegation to the Commissioner of authority to regulate facilities was reasonable and constitutional. The court stated that "[t]he rule is that the courts will not interfere with the exercise of the legislatively created powers of an administrative agency absent a showing that the agency's actions were palpably arbitrary, unreasonable or capricious."

The same belief was clearly enunciated in Skokie Federal Savings & Loan Association v. Illinois Savings & Loan Board. Analogizing to the legislative authorization of power to the Director of Insurance discussed in Stofer v. Motor Vehicle Casualty Co., the court concluded that section 709(b) complied with the necessary criteria for the delegation of authority and that such legislative delegation to the Commission to adopt regulations for facilities was proper.}


54. 56 Ill. App. 3d at 913, 372 N.E.2d at 1125. See note 59 infra.


57. 68 Ill. 2d 361, 369 N.E.2d 875 (1977).

58. 61 Ill. App. 3d at 984-85, 378 N.E.2d at 1095-96.

59. *Id.* at 985, 378 N.E.2d at 1096. The Illinois Supreme Court, in Stofer, examined the present complexity of government, noting that to require the legislature to delineate all permissible actions would result in hopeless inefficiency. 68 Ill. 2d 361, 372-73, 369 N.E.2d at 879. Thus, as a general principle, administrative agencies are created by the state to carry out the will of the state as expressed by the General Assembly. The powers exercised by such administrative agencies and their officers derive solely from the statute. 1 ILL. LAW & PRACTICE, Administrative Law §§ 2, 21 (1953). In the case of savings and loans, the Commissioner and the Illinois Savings and Loan Board derive their power from the Illinois Savings and Loan Act. ILL. REV. STAT. ch. 32, §§ 701-944 (1977). These powers include the implied power to do what is reasonably necessary to execute their duties. As such, the Illinois General Assembly has delegated some discretionary power to adopt rules and regulations to carry out the duties imposed on administrative agencies.
Given that the statute permitting the establishment of facilities is constitutional and that the authority to prescribe regulations regarding the establishment of facilities properly lies with the Commissioner, section 709(b) still limits the means by which facilities may be established to mergers, consolidations, bulk sales, or relocations. Furthermore, the Savings and Loan Act provides that the Commissioner shall not approve a change in the location of an association's business office or the establishment of an additional office unless a need exists for an association in the proposed area of operation and if the facility can be maintained without undue injury to existing associations.

These limitations were considered by the court in Skokie Federal. Five cases were consolidated for appeal to challenge the constitutional aspects of the statute and the Commissioner's authority. Additionally, in each case, objections to relocation by state-chartered savings and loan associations and the Commissioner's specific factual determination were raised.

In one of the five consolidated actions, the court considered certain aspects of relocation pursuant to the statute. In its suit, Skokie Federal maintained that requests by two state savings and loan associations to relocate to an area near Skokie Federal were mere subterfuges, lacking in substance, used as a guise to allow the other two associations to expand their operations in contravention of the prohibition against branch banking. Neither of the state savings and loan associations had sufficient assets to carry forward a relocation. Consequently, there could have been no intent on the part of either actually to relocate. The Illinois Appellate Court for the First District held that an actual intent to relocate was not required by the statute where the ultimate result contemplated was a merger, consolidation, or bulk sale. Therefore, the court said, the intent of the associations was not controlling and the relocations were allowed.

by law. I Ill. Law & Practice, Administrative Law §§ 22, 24 (1953). Administrative rulemaking is not unrestrained. The courts have required that the legislature, in delegating power, provide sufficient identification of: "(1) The persons and activities potentially subject to regulation; (2) the harm sought to be prevented; and (3) the general means intended to be available to the administrator to prevent the identified harm." 68 Ill. 2d at 372, 369 N.E.2d at 879. It has been held that section 709(b) complies with these criteria. 61 Ill. App. 3d at 985, 378 N.E.2d at 1096.

60. ILL. REV. STAT. ch. 32, § 709(b) (1977).
63. Id. at 988, 378 N.E.2d at 1098.
64. ILL. REV. STAT. ch. 32, § 709(b) (1977).
65. 61 Ill. App. 3d at 988, 378 N.E.2d at 1098.
66. Id.
fused to apply the restrictive interpretation that section 709(b) was to be utilized only in cases where an association sought to remove its principal business office from an economically declining area.\(^6\)

The court appears to have held that a savings and loan association may add a facility even when there is no intent to relocate its main office. Apparently, the court would permit such a move even if it is not dictated by the economics of a declining area. This suggests that the court is adopting a more expansive view and will in the future be more receptive when considering whether the reason for a requested change in location is sufficient.

In analyzing the various factual situations presented by the consolidated cases, the *Skokie Federal* court considered Section 744(h) of the Illinois Savings and Loan Act.\(^6\) The actions involved relocations of offices authorized by the Commissioner pursuant to mergers or bulk sales of assets from one state savings and loan to another state association. The plaintiffs' common objection was that no need existed for another savings and loan association in the area planned for relocation. The federal associations asserted that these new facilities would cause undue injury to existing financial institutions in the area since support for such existing institutions would be eroded by the presence of another facility.\(^6\) Should this occur, the facility would violate the provisions of section 744(h).\(^7\) The state-chartered savings and loans denied that their presence in the areas of relocation would cause injury. The court pointed out that the factual situations were susceptible of varying determinations.\(^7\) Within this context, the Commissioner's administrative determination of fact represented an expert judgment not readily measurable by precise judicial standards. As a result, the court held that the findings of the Commissioner would not be reversed unless the record fails to support the conclusions.\(^7\) The court held that reasonable competition is to be encouraged in order to better serve the public interest of the locale.\(^7\) In light of these two considerations, the court upheld all five relocations.\(^7\)

\(^{67}\) Id.

\(^{68}\) See text accompanying note 62, supra.

\(^{69}\) 61 Ill. App. 3d at 988-98, 378 N.E.2d at 1098-1106.

\(^{70}\) See text accompanying note 62, supra.

\(^{71}\) 61 Ill. App. 3d at 997, 378 N.E.2d at 1104. In one of the combined actions, two expert witnesses considered the factual situation and "reached opposite determinations concerning need and undue injury based on . . . analysis of the matter." *Id.* at 997, 378 N.E.2d at 1101.

\(^{72}\) *Id.* at 991, 378 N.E.2d at 1100, *citing* Skokie Fed. Sav. & Loan Ass'n v. Becker, 26 Ill. 2d 76, 185 N.E.2d 861 (1962).

\(^{73}\) 61 Ill. App. 3d at 998, 378 N.E.2d at 1105.

\(^{74}\) *Id.* at 998, 378 N.E.2d at 1106.
It is apparent that in the four years since Lyons there has been a gradual trend in both the legislature and the judiciary to permit more than one place of business for state-chartered savings and loan associations. The 1975 legislative amendment to section 709(b) had the effect of expanding the number of permissible facilities from one to an unlimited number if established by way of mergers, consolidations, or bulk sales transactions. Additionally, the requirement that such transactions be "supervisory" was dropped. The term "supervisory" had been susceptible to the interpretation that mergers were only permitted for financially unstable institutions. This combination of changes led the Illinois Appellate Court for the First District, in Skokie Federal, to conclude that the statutory amendments "substantially lessened the restrictions on the expansion of state-chartered associations."

While the potential for the proliferation of facilities is limitless, the fact that establishment of facilities is restricted to mergers, consolidations, and bulk sales effectively limits the practical ability to acquire new facilities. However, the legislature provided considerable incentive for state savings and loans to merge. In 1975, the Illinois General Assembly passed legislation requiring all savings and loan associations to obtain insurance on their withdrawable capital accounts. In Security Savings & Loan Association of Hillsboro v. Griffin, the court stated, "Many smaller savings and loans... were unable to afford such insurance and were left with two alternatives—merge with a larger institution capable of meeting the criteria for obtaining insurance of accounts, or liquidate."

As a practical matter, the limitation on facilities does not impose as great a restriction as it might seem. The reason is simply that those

76. ILL. REV. STAT. ch. 32, § 709(b) (1975).
77. Id.
78. 61 Ill. App. 3d at 989, 378 N.E.2d at 1098-99.
79. Id. at 984, 378 N.E.2d at 1095.
80. ILL. REV. STAT. ch. 32, § 711 (1977) provides in pertinent part:
An association operating under this Act shall, before June 30, 1975, obtain and maintain insurance of the association's withdrawable capital by an insurance corporation... in an amount at least equal to that provided by the Federal Savings and Loan Insurance Corporation.
"Insurance corporation" is defined as: "The Federal Savings and Loan Insurance Corporation, or such other instrumentality of or corporation chartered by the United States." ILL. REV. STAT. ch. 32, § 710.10 (1977).
82. 56 Ill. App. 3d at 905, 372 N.E.2d at 1120.
associations that would have a difficult time initiating a merger to gain a facility are those least inclined to do so while associations that desire additional facilities are generally in a better position to establish them. The small "neighborhood" association has a well defined market area and, as a general proposition, would appear unlikely to need additional facilities. Also, the small association probably lacks the necessary capital or leverage to attempt to enter a new market area.

Larger associations with more extensive market areas might well benefit by establishing additional facilities. They are better able to accomplish the establishment of facilities through merger, consolidation, or bulk sale because they are more likely to have sufficient capital for the acquisition of a facility through a bulk purchase of assets of another association. Merging does require a willing "mergee," and the fact that an association desires to merge or consolidate does not guarantee that this desire will be satisfied. Again, the statutory "persuasion" applied to savings and loan associations by requiring insurance on capital accounts makes the accomplishment of merger easier.

The establishment of facilities can be done without merger, consolidation, or bulk sale if effectuated properly through the process of relocation. In such a case, the association may be allowed to maintain the original office as a facility. While such relocations are, of

83. There are of course exceptions to this proposition, but as the textual analysis indicates, reality supports this general conclusion. See text accompanying notes 84-87 infra.

84. "Historically, savings and loan associations have developed from local, neighborhood foundations." Comment, supra note 8, at 667. The Home Owner's Loan Act of 1933 itself provides that savings and loan associations are to be established "in order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes. . . ." 12 U.S.C. § 1464(a) (1976).

85. In downstate areas in particular, where the population density is much lower, associations serve more clearly defined markets and assets of those associations necessarily are less than those of institutions in more heavily populated areas. These smaller associations are less likely to merge or be in a position to acquire another location through bulk purchases. Also, the establishment of a facility in a new area is much less likely to be needed and more likely to cause injury to existing associations. In such a case, the limitations of section 744(h) would act to prohibit a relocation. ILL. REV. STAT. ch. 32, § 744(h) (1977).

86. By definition, larger associations have more assets than smaller associations. As a result, they can make more loans and, even if the rate of return on money lent is the same for large and small associations, the larger association will generate greater gross profits. This leaves the association in a better position to engage in a bulk purchase of another association's assets, or to exert leverage in effecting a merger.

87. There may be no institutions that desire to be such a "mergee." Therefore, there is no guarantee that a merger can be effectuated.


89. See ILL. REV. STAT. ch. 32, § 709(b) (1977). A relocation, here, occurs when an association wishes to transfer its principal office to a new locale. Relocation represents a specific statutory procedure for establishing a facility and is to be distinguished from relocation in a generic sense which might be interpreted to include moves made in connection with a merger or consolidation.
course, subject to the limitations that they must not cause injury to existing associations in the area of relocation, this process does provide a means of circumventing the merger, consolidation, or bulk sale route used to obtain an additional operating location. These combined factors indicate that the statutory limitations on new facilities, while restricting the situations under which facilities can be established, do not, in practice, prevent the establishment of facilities.\textsuperscript{90}

Furthermore, permeating all of these considerations is the fact that judicial decisions have indicated a reluctance on the part of the courts to interfere with the Commissioner’s regulation of facilities.\textsuperscript{91} As a result, the Commissioner is left with substantial discretion in adopting these regulations and in making factual determinations of whether savings and loan institutions meet the requirements of the regulations. Typically, the Commissioner is a strong advocate for allowing the maximum amount of activity by savings and loan associations and facilities in advancing the purposes enunciated in the Savings and Loan Act.\textsuperscript{92}

A potentially injurious disparity had been created for state savings and loan associations by the FHLBB authorization of branches by federal associations and the subsequent judicial approval of such branches in Lyons.\textsuperscript{93} Since that time, the legislature and courts have closed the competitive gap created by the disparity in branching rights by advancing more liberal rules for the establishment of facilities.\textsuperscript{94} It is apparent, however, that the legislature has determinedly avoided permitting branches per se for state associations.\textsuperscript{95}

\textsuperscript{90} In fact, the legislative incentives to merge, the broad discretionary powers given the Commissioner, the lack of judicial interference, the economic realities, and the potential for statutory relocation do much to erode the obstructions to establishing a facility.


\textsuperscript{92} Without facilities for state savings and loans, federal associations could gain a competitive advantage through branches. See text accompanying notes 22-23 and 44-46 supra. This, of course, would be detrimental to state institutions. Hence, the Commissioner’s strong advocacy position. It should be noted that there is a self-preservation motivation for the Commissioner. If federal associations gain a significant competitive advantage, the number of state associations would probably decline as they converted to federal associations. This would in turn decrease the extent of the Commissioner's jurisdiction, and represent an evaporation of his power base. See Security Sav. & Loan Ass’n of Hillsboro v. Griffin, 56 Ill. App. 3d 903, 912-13, 372 N.E.2d 1118, 1125 (1978).

\textsuperscript{93} 377 F. Supp. 11 (N.D. Ill. 1974).

\textsuperscript{94} See, e.g., ILL. REV. STAT. ch. 32, § 709(b) (1975) & (1977).

\textsuperscript{95} See ILL. REV. STAT. ch. 32, § 709(b) (1977).
NOTES AND COMMENTS

ANALYSIS: THE FUNCTIONAL EQUIVALENCE OF FACILITIES AND BRANCHES

Perhaps the most tenable explanation for the legislature's failure to permit branching is that facilities have accomplished the same objectives for state savings and loan associations as branches have for federal associations. Arguably, the need for branching by state associations has been eliminated by the increase of facilities, and the necessary pressures to effectuate a statutory change have simply not been present.\textsuperscript{96}

The question then becomes: Is a facility the functional equivalent of a branch?\textsuperscript{97} If facilities are equivalent to branches, then the argument concerning competitive advantages and disadvantages arising from disparities in branching rights becomes largely irrelevant, as does the need for any statutory revision to permit branches.\textsuperscript{98}

As an initial step, it must be determined whether facilities meet the criteria established in the general definition of a branch as set out in the introduction.\textsuperscript{99} A facility, like a branch, is a separate physical entity which is united in a legal sense to the main office. It has no separate board of directors or capital structure, operating instead as an instrumentality of the principal business office of the savings and loan association.\textsuperscript{100} Thus, in a very general sense, facilities and branches are identical. Of greater significance is an inquiry into whether facilities and branches, in a practical sense, operate in the same way.

\textsuperscript{96} See text accompanying notes 97-130 infra.

\textsuperscript{97} Illinois is unique among large states in its prohibition of branching. A survey of six other large industrial states, where the combined savings at savings and loan associations, when included with those in Illinois, total 53% of the total of all savings at savings and loan associations nationwide, reveals that all of them allow branching by state savings and loan associations. See \textsuperscript{96}CAL. FIN. CODE §§ 6000-10 (West) (1968); FLA. STAT. § 665.441 (Supp. 1973); N.J. REV. STAT. § 17:12B-25 (1963); 4 N.Y. BANKING LAW § 396 (McKinney) (1970); OHIO REV. CODE ANN. § 1111.03 (Page) (1968); PA. STAT. ANN. tit. 7, § 902 (Purdon) (1965). The result is that, in states comparable to Illinois, one never reaches the question of whether a facility is equivalent to a branch. In the six states that permit branching by state savings and loan associations, 71% of the savings at savings and loan associations are located at branch offices. In Illinois, where state association branches are prohibited, only 23% of these savings are located at branch offices. August FHLBB Journal, supra note 1, at 14.

\textsuperscript{98} In establishing the McFadden Act, 12 U.S.C. § 36(c) (1970), Congress responded to branching by state banks. The Act gave authority to national banks to branch in the manner prescribed by state law. This, Congress reasoned, would establish competitive equality. Wolfson & Stevens, \textit{You Can Bank On It: An Analysis of Judicial Branch Bank Characterization and an Alternative Proposal}, 5 RUTGERS J. COMPUTERS & L. 389, 392-94 (1975) [hereinafter referred to as Wolfson & Stevens]. The situation is analogous for savings and loan associations. If state and federal associations can establish remote offices that perform the same functions, then there will be competitive equality no matter what label is given to such offices.

\textsuperscript{99} See text accompanying notes 4-6 supra.

It has been suggested that the best means of analyzing whether a facility qualifies as a branch, or in this case whether a facility is equivalent to a branch, is to apply a functional test. Under such an approach, the focus is on the traditional banking functions performed by the facility. Under the Illinois Savings and Loan Act, facilities are permitted to receive deposits; cash and issue checks, drafts, and money orders; change money; process mortgages; and receive money on indebtedness. It is evident from this list of permissible functions that the typical day-to-day operational functions of a savings and loan association can be carried on at a facility. Absent from the list are only the more involved major transactions. These more complex transactions are few in number compared to the permissible functions.

No definition of branches is provided by Illinois statute since branching is prohibited. Similarly, under HOLA, there is no statement as to what constitutes a branch. As a result of this lack of any definitive statement on what constitutes a branch, branches may take on a variety of forms and functions. Interpretations of the National Bank Act have included under the definition of “branch” any place for receiving deposits or cashing checks or lending money apart from the chartered premises. Similarly, the United States Court of Appeals for the Seventh Circuit held in Illinois ex rel Lignoul v. Continental Ill. Nat’l Bank & Trust Co. that an off-premises electronic bank facility


102. ILL. REV. STAT. ch. 32, § 709(c) (1977).

103. The two most important functions of a savings and loan association historically have been savings, and mortgage loans. See note 84 supra. The statute specifically permits facilities to receive deposits, process mortgages, and receive money on indebtedness. ILL. REV. STAT. ch. 32, § 709(c) (1977). It would appear that the only operations which would not be permitted under the statute would be such transactions as initial processing of specialized accounts such as escrow and Individual Retirement Accounts (IRA accounts). However, even with these transactions, once the accounts are opened, it would appear that the normal day-to-day activities involving these accounts could be handled by the facilities, since receipts and deposits, as well as payment on loans are permitted functions at facilities. Id. See text accompanying notes 106-07 infra.

104. In the case of a savings or checking account, for instance after the initial “complex” transaction of opening the account that would be performed at the main office, literally thousands of normal transactions might be handled at the facility.


108. 536 F.2d 176 (7th Cir. 1976), cert. denied, 429 U.S. 871 (1976).

where customers could deposit and withdraw money, cash checks, and make payments on loans was a branch.109

Facilities, then, appear to meet the minimum definition of branches. As such, facilities may perform exactly the same functions, or even more functions than a branch. Admittedly, these are only minimum standards. At the opposite end of the spectrum, where branches are performing all of the potential banking services, there will not be an exact equivalence. Two important factors suggest that any such discrepancy is not critical. First, one of the important aspects to be examined under the functional test is the way in which the individual customer perceives the nature and function of a branch or facility.110

Here, given the great overlap in functions and the fact that the most numerous and common transactions, specifically savings deposits, check-cashing as well as loan-processing and payment, can be handled at a facility, it is likely that the average customer perceives facilities and branches as being equivalent. Secondly, and more importantly, facilities and branches are both used to advance the goal of customer-oriented service, through which savings institutions hope to realize the ultimate goal of cultivating new savings dollars. In providing better service and in taking-in savings dollars, the facility, with its ability to perform the normal day-to-day operations, is as effective as a branch in achieving the associations' aims. Thus, from a functional standpoint, a facility must be regarded as equivalent to a branch.

While it appears that facilities are equivalent to branches in many, or most, cases, several questions still remain unanswered. First, if facilities and branches are in effect identical, why do the courts, as did the Illinois appellate court in Security Savings & Loan Association of Hillsboro v. Griffin,111 distinguish between them? The obvious answer is that the Illinois statute prohibits branching by savings and loan associations. If facilities were equated with branches, they would be violative of the statute. It is apparent that in order to preserve facilities, the court had to differentiate between facilities and branches. The distinction does not represent a belief that the two are somehow fundamentally different as much as it signifies a willingness on the part of the judiciary to permit facilities as a response to branching.

At this juncture, a second question arises: Why not simply allow branching for state associations? The answer requires a reconsidera-

109. Id. at 177.
110. Wolfson & Stevens, supra note 98, at 428.
tion of competition, not only between savings and loan associations, but also between savings and loans and other financial intermediaries, namely banks. This, in turn, involves an analysis of the forces that might bring about a change.

Where a disparity in branching rights exists, there is pressure by those with fewer rights to equalize the rights so that they will be able to compete effectively. Once the gap is closed, the pressures for change subside. Where, as in Illinois, facilities closely approximate branches, any tendency to exert pressure to obtain greater branching rights is largely eliminated. In initially authorizing branches for federal associations, the FHLBB expressed concern that facilities were giving state associations a competitive advantage. Sensing a disparity in rights, the FHLBB reacted to increase the ability of its member associations to have more than one location for business. The rise of branches apparently tipped the scales the other way, giving the federal associations a competitive edge. Again, there was pressure for change and the response was to cut back restrictions on facilities. As facilities were increasingly used by state associations, any competitive advantage that federal associations may have enjoyed was largely neutralized. The court, in Skokie Federal, recognized this and refused to find facilities unconstitutional because of alleged differences in abilities to establish more than one office. As a result, there is presently no significant propensity for change.

If a change were to be made in the existing prohibition on branching by associations, it would necessarily affect the rights of banks. The reason is that, historically, the statutory provisions for branching by savings and loan associations have been linked to the provisions for banks. Section 709(b) provides that “[n]o association may establish branches or offices . . . unless, and to the geographical extent . . . branch powers and offices are granted to state banks.” To permit state savings and loan associations to branch would require one of two approaches. The legislature either could allow section 709(b) to stand as it is and change the bank statutes to permit branching or it could amend section 709(b) to permit savings and loan associations to

117. Id.
branch, while maintaining the prohibition against branches for banks. In short, drop the link between savings and loan provisions and bank statutory provisions.

Neither alternative is likely to be adopted by the Illinois legislature. Under the first alternative, state savings and loan associations would be given little if any new advantage. In large measure, the only change would be in renaming facilities as branches. Banks in Illinois are also presently allowed to maintain two facilities under the statutes. They are subject to fairly significant limitations. The imposition of such limitations would probably mean that the facility would only meet the bare minimum requirements of a branch, and might not be equivalent to many branches which are permitted extensive geographic and functional rights. In meeting the minimum requirements for branches, however, it is possible that the facility will approximate some branches. If that is the case, there is again little incentive to effect a legislative change. If bank facilities are not equivalent to savings and loan facilities or branches, so that permissible branching would give banks increased rights, the potential problems created by permitting them to branch would seem to outweigh any advantages.

Unlike federal savings and loan associations, branching policies for federal banks are tied to state policies. As a result, federal banks have exactly the same branching limitations as state banks have. If state banks were to be suddenly granted branching rights, this could create a disparity in branching rights among banks which could lead to competitive inequality. This, in turn, would force federal banks operating in Illinois to branch. Such a result may be desirable, but it

118. ILL. REV. STAT. ch. 16 1/2, § 105(15) (1977).
119. Id. The statute provides in pertinent part:
(a) No facility shall be more than 3500 yards from the main banking premises of the maintaining bank; and if 2 facilities are maintained at least one of the facilities shall be 1500 feet or less from the main premises of the maintaining bank.
(b) No facility shall be closer than 600 feet to any then existing main banking premises. (Certain exceptions are enumerated).
(c) Not more than 2 facilities shall be established or maintained by a bank at any one time. . . .
120. See text accompanying notes 105-10 supra.
122. RITTER & SILBER, supra note 112 at 379-81. The authors argue that there are too many small banks and that the public would be better served if there were fewer banks, with more of them close to the optimum size. The optimum size is larger than the size of most present banks. The reason that the banking industry is not operating at its optimum size, say the authors, is antibranching statutes:

Apparently there is only one realistic way to initiate meaningful change in this area, and that is by removing federal deference to state branching statutes—permitting federally chartered banks, in other words, to branch over a specified area regardless of state law.
seems unlikely that the legislature would effectuate such a change, unless a careful study on the merits indicated a need by state and federal banks to branch. Certainly, a change in bank branching laws will not come about as a response to state savings and loan associations' desire to have branches instead of facilities.

The second alternative—permitting branches for state savings and loan associations while maintaining the prohibition against branches for banks—creates similar problems. In particular, if the link between savings and loan associations and banking institutions is eliminated, the door is opened for the creation of competitive disparities which may be detrimental.\(^\text{124}\)

Some final observations are necessary to put these considerations into proper perspective. Savings and loan associations and banks originally were designed to serve essentially separate functions. The primary purposes of associations were to make mortgage loans and to accept savings deposits.\(^\text{125}\) Banks, on the other hand, provided some additional functions—commercial loans and checking accounts are two of the more common examples. While the distinction between savings and loans and bank functions have been blurred,\(^\text{126}\) to the extent that the distinction remains, the arguments about competitive disparities arising from different branching rights become largely irrelevant, since savings and loan associations and banks do not directly compete in these areas.

Admittedly, the two intermediaries do compete for savings dollars. Branching, however, is only one of many ways to achieve a customer-oriented service which attracts savings. In fact, other methods may be more effective. Longer banking hours, Negotiable Order of With-

\(^\text{Under such competitive pressures, the states can be expected to accelerate the granting of similar rights to institutions chartered by themselves. }\)\(^\text{Id. at 381.}\)

The same pressures would work in reverse if state associations were permitted to branch.

123. \textit{Id.}\n
124. Once the link between savings and loan associations and banks is gone, it is at least theoretically possible that one or the other of the financial intermediaries might eventually be authorized to engage in activities in which the other one cannot engage. In such a case, the disparity of rights would again establish competitive advantages and disadvantages, some of which may not be acceptable.

125. Comment, \textit{supra} note 8, at 667.

126. The blurring of the distinctions between savings and loan associations and banks is in part a result of savings and loans expanding upon their traditional roles of providing savings and house mortgages. As savings and loans have catered to customers by providing Individual Retirement Accounts (IRA), Keough plans, Negotiable Order of Withdrawal accounts (\textit{see} note 127 \textit{infra}), and making loans on non-residential buildings, they have necessarily moved into areas in which banks also operate. There has been in short, an increased overlapping of services provided by banks and savings and loan associations.
drawal accounts, free gifts, and new provisions which effectively allow interest on checking accounts are all methods of competing for savings dollars which render the use of branches much less important.

Further, access to savings dollars can perhaps be better accomplished through methods such as mobile savings units, satellite facilities, and computer terminals placed in convenient areas for transacting banking business. Certainly, these methods bring the savings and loan closer to the customers and their assets and make banking easier for savers.

From an overall perspective, then, the forces necessary to bring about branching for state savings and loan associations simply do not exist. It is much more likely that pressure will be exerted to expand the functions that may be performed by facilities and to permit the use of satellite facilities, mobile units, and computer terminals.

**CONCLUSION**

The problem of competitive disadvantage which confronted state savings and loan associations after the Federal Home Loan Bank Board authorization of branches by federal associations, and approval of such authorization in *Lyons Savings & Loan Association v. Federal Home Loan Bank Board*, has been answered in large part by the development of facilities for state-chartered savings and loan associations. Statutory amendments, making easier the creation of facilities, and judicial decisions supporting competition and conferring broad discretionary powers upon the Commissioner of Savings and Loans in Illi-

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127. Negotiable Order of Withdrawal accounts, commonly referred to as NOW accounts, operate much like checking accounts: "withdrawal is made by negotiable instrument, which, similar to a check, could be delivered to third parties in payment of debts." Comment, *Banking Law—New York State Savings Are Without Authority to Offer Negotiable Order of Withdrawal ‘NOW’ Accounts*, 43 FORDHAM L. REV. 1044, 1045 (1975).

128. When a person writes a check, the amount needed to cover the check is transferred from the savings account to the checking account. This arrangement allows one to keep a greater portion of savings in interest earning savings accounts instead of non-interest earning checking accounts, while still retaining the benefits of a checking account.

129. By establishing satellite offices in hospitals or shopping malls, or by installing computer banking terminals in such places, or even in the home, banking would be made extremely convenient for customers. The point is that these methods can be more effective than facilities or branches in reaching out for the limited savings dollars in the hands of the public. For a discussion of computer banking terminals, see Wolfson & Stevens, *supra* note 98, at 391.

130. One open question remains: Will the use of facilities and branches result in greater competition and lower prices, or will the present trend of concentration in associations reach a stage where monopoly power can be exerted in the marketplace? The answer is difficult to foresee at this point. While concentration is occurring, some will argue (see note 110 *supra*) that such concentration may be beneficial in that it helps financial institutions to attain their economically optimum size.
nois, have led to the functional equivalence of facilities and branches. Now that the "competitive gap" arising out of a disparity in branching powers has effectively been closed, there is little incentive to permit branching for state associations. Specifically, in Illinois, the rise of facilities has restored the branching issue to a position of relative equilibrium. Unless other pressures or forces arise, there is little likelihood of a dramatic change from the equilibrium position.

Real pressures do exist, however, to expand the rights and activities of facilities, and to permit satellite and mobile units and computer terminals to transact business. In theory, such pressure will ultimately lead to legislative changes to permit the use of such equipment. It would appear that it is in this area that the energies of savings and loan associations and the legislature are likely to be focused. If change occurs, it most likely will be in the form of expanded services that facilities may perform. As for the branching issue itself, it has become largely redundant and unimportant.

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