



Economic Affairs Interim Committee

58th Montana Legislature

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October 21, 2003

To: Economic Affairs Committee

From: Pat Murdo, Committee Staff

Re: Proposed joint half-day meeting with the State Administration and Veterans' Affairs Committee on financial institution regulation and a proposed federal rule regarding federally chartered banks.

Background: The National Conference of State Legislatures Financial Services Committee (Montana members are Sens. Barkus and Harrington and Reps. Matthews and Sinrud) asked legislators in October to respond to a proposed rule by the Office of the Comptroller of the Currency regarding a preemption of state laws that regulate federally chartered banks and their subsidiaries. Federally chartered banks, under Supreme Court decisions, already are not under state regulation for any activity that obstructs a national bank's exercise of powers granted under federal law. Some state regulation does occur, particularly related to consumer protection. One Supreme Court decision says that states may pass laws regarding contracts, debt collection, acquisition and transfer of property, taxation, zoning, crimes, torts and homestead rights. (Federal Register, p. 46128, Tuesday, Aug. 5, Vol. 68, No. 150). The proposed regulation has several features; among them is an expansion of preemption authority to any obstruction "in whole or in part, or condition" -- an expansion of authority that NCSL contends is too broad and results in a conflict with a state's rights to regulate. NCSL further contends that the proposed rule would create an uneven regulatory field, perhaps jeopardizing the dual banking system of federally chartered or state-chartered banks. The Conference of State Bank Supervisors comments: "Nevertheless, the OCC claims a virtually unlimited power to override state law, based on its assertion that Congress has given the OCC 'comprehensive authority to ... protect national banks from potentially hostile state interference by establishing that the authority to examine, supervise, and regulate national banks is vested *only* in the OCC unless otherwise provided by Federal law.'" (OCC Docket 03-16 at 46120-21 -- emphasis in original)

The OCC's presentation in the Federal Register on behalf of the proposed rule notes: "Although the national bank branching statute makes applicable the laws of the host state regarding community reinvestment, consumer protection, and fair lending to branches of an out-of-state national bank located in the host state to the same extent as those laws apply to a bank chartered by that state, the statute expressly excepts any case where Federal law preempts the application of state law to national banks." (Federal Register, Aug. 5, 2003, p. 46122)

As a result of NCSL's request for legislators to respond, I contacted legislators on the Financial Services Committee as well as legislators suggested by legislative leadership. One of these, Sen. Royal Johnson, asked that an educational briefing be held regarding who regulates whom.

The question: Does the Economic Affairs Committee want to participate in a half-day meeting with the State Administration and Veterans Affairs Committee on this issue, which may have some economic development aspects (in relation to lending and regulation)? Among the reasons for asking:

- 1) **Logistics convenience.** Sen. Johnson will be attending an Energy Committee meeting Jan. 22. Economic Affairs is set to meet Jan. 23. State Administration is set to meet Jan. 26 (the following Monday) but could reschedule for a joint meeting. State Administration oversees the Banking Commissioner, who is primarily involved in this issue for the state. Economic Affairs oversees the Insurance Commissioner, who may or may not be involved. (The office is checking.)
- 2) **Possible insurance connection.** The emphasis on subsidiaries of federally chartered banks raises a question of whether there is any overlap with the insurance industry. Insurance generally is excluded and under state regulation, but the State Auditor's office is checking to make sure there is no overlap.
- 3) **Possible economic development connection.** There is a question of whether the rule could affect economic development. One argument regarding federally chartered banks is that the decisions on lending take place far from rural states. But any bank can be federally chartered. For example, federally chartered banks may be as small and local as the First National Bank in Ekalaka or as large as Wells Fargo. State-chartered banks may be as large as First Interstate and with as many branches as the Stockman Bank of Montana, which serves much of southeastern Montana. There are about 60 state-chartered banks and 15 nationally chartered banks in Montana. In terms of regulation, there is some concern that if the OCC rule goes into effect that subsidiaries of federally chartered banks may receive less regulation than they do at the present time from state regulators.

The issue is complex, which is why Sen. Johnson wanted to know who regulates whom. The NCSL contends the proposed rule could eliminate a dual-banking system, making the system more like Canada's federal banking system. Whether that would happen is part of the debate.

Complicating the issue is the merger of banks with securities firms, mortgage lenders, title companies, leasing companies, and check cashing companies, as allowed by the Gramm-Leach-Bliley Act (PL 106-102). These subsidiaries of federally chartered banks would not be subject to state regulation, unless specifically allowed by Congress.

What is the basic reason for a briefing?

Sen. Johnson's request was for information regarding how the dual banking system works. The proposed OCC rule may go into effect as early as December. However, John Cadby of the Montana Bankers Association says that mail to Congress asking for a delay in implementation may result in Congress taking action. The issue is basically a federal issue, but NCSL suggests states should be considered because it is also a states' rights issue.