

NORTHWESTERN Banker Newsletter

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CBCT Deposit Function Ruled Illegal

A federal district judge in Denver ruled Thursday that a remote electronic teller terminal operated by the First National Bank of Fort Collins is illegal because it violates provisions of the National Banking Act and a state law against branch banking.

U.S. District Judge Richard P. Matsch also held that an "interpretive ruling" by U.S. Comptroller of the Currency James E. Smith permitting national banks to install such terminals without reference to state banking laws is invalid.

Details of the decision were reported in the Rocky Mountain News, Denver.

Specifically, the judge held that the customer-bank communications terminal (CBCT) installed by the First National of Fort Collins three miles from its main bank violates the McFadden Act because it accepts customer deposits.

The machine, a 24-hour Docutel drive-up teller terminal located at a bank loan office in a shopping center, also transfers funds between customers' checking and savings accounts, dispenses packets of either \$25 or \$50 in cash as advances against an established line of credit and accepts loan payments.

It is operated with a plastic bank card and cash advances can be obtained with a Master Charge card.

Judge Matsch's decision cited provisions of the National Banking Act (also called the McFadden Act) which classify a branch bank as "any branch bank, branch office, branch agency, additional office or any branch place of business...at which deposits are received, or checks paid, or money lent."

He ruled that while the machine does accept deposits, it doesn't make loans or cash checks in the legally accepted sense of those terms. But the fact that it does accept deposits was enough to classify it as a branch bank, the judge held.

The National Banking Act gives state banking regulatory agencies jurisdiction over branches, including those of nationally chartered banks, and Colorado law provides that branch banking is illegal. Commercial banks in the state can operate one limited-service detached facility—usually a drive-up teller station—within 3,000 feet of the main bank.

The First National of Fort Collins installed the CBCT in February under an "interpretive ruling" issued by Comptroller Smith last December. That ruling held, in essence, that CBCTs weren't branch banks and thus didn't fall within the jurisdiction of state bank regulatory officials.

In April the State Banking Board in a 7-to-0 decision held that

the terminal did violate Colorado's law against branch banks and a portion of that law which sets the distance limit on detached facilities. The Colorado attorney general's office brought suit against the Fort Collins Bank and the comptroller.

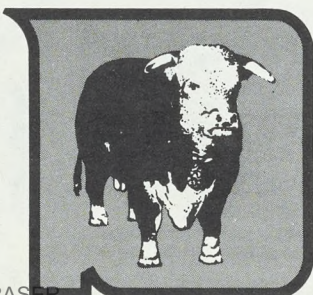
Judge Matsch's decision noted that the remote teller records the transactions made by customers on printed transaction forms, and that these forms are collected by the bank from the machine at the beginning of the business day and taken to main bank for verification and posting.

He noted that the United States Supreme Court had rejected in a 1969 case the argument that a deposit wasn't technically made with a bank until it had been taken to the main bank office and verified.

"Because I can see no functional difference between the way in which a customer makes a deposit in this (the Fort Collins) machine and the stationary receptacle for deposits which was the subject of the decision in (the 1969 case), I am compelled to conclude that it is (a place where deposits are received)," Matsch said.

"Accordingly, to the extent that it performs the function of receiving deposits, this machine constitutes a branch bank under (federal law). Because the bank already has a
CBCT RULED ILLEGAL. . . .
[Turn to page 3, please]

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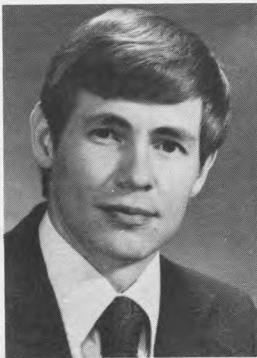


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Iowa News

The Iowa Bankers Association will conduct five regional seminars this month on the Direct Deposit Social Security program which will begin in August.

The June meetings will be as follows:

16th--Waterloo, Ramada Inn.

17th--Ottumwa, Indian Hills Community College.

18th--Des Moines, Rolling Prairie Inn.

19th--Red Oak, Holiday Inn.

20th--Storm Lake, Buena Vista College.

All seminars will run from 9:30 a.m. to 3:00 p.m.

CARROLL: William A. Vonnahme has been named instalment loan officer of the Carroll County State Bank, according to Joe H. Gronstal, bank president. He formerly was operations manager with Postal Finance Company in Omaha, Nebr.

DES MOINES: Registrations are now being accepted for the Iowa Bankers Association Instalment Lending School to be held at Drake University in Des Moines, August 17-22. Seventy students will be accepted. The fee of \$170 covers

room, tuition and all other expenses related to the week-long school.

DES MOINES: Each Iowa bank has received a ballot on which names are to be entered for the offices of vice president (president-elect) and treasurer of the Iowa Bankers Association. Each bank may nominate one person for each office. Ballots must be returned to the IBA office in Des Moines by June 21.

DES MOINES: The Electronic Funds Transfer Systems bill sponsored by the Iowa Bankers Association—Senate File 536—has been passed by the Iowa Senate by a vote of 36 to 8 with six members not voting. The bill has been turned over to the House.

DES MOINES: The Iowa Automated Clearing House Association has signed 95.1% of Iowa's 624 eligible banks. The other 42 Iowa banks are in the six southwest counties served by Omaha and MACHA.

Nebraska News

OMAHA: The U. S. National Bank will install five Customer Bank Communication Terminals (CBCTs) in Omaha stores this summer, Senior Vice President

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Omaha, Nebraska

Gene L. Burgen has announced. This is the first announcement of such installation in Omaha to be made under the Comptroller of the Currency's ruling on electronic terminals which becomes effective July 1. Called BancoMats, the IBM 3604 terminals will be installed at Food City Supermarkets located at 2500 So. 120th St. and 2451 No. 90th St., and at Philips Department Store, 4935 So. 24th St. Each location also will have an IBM 3610 receipt printer and IBM 3604 Model 1 for customer security code entry. The other two locations will be announced soon, Mr. Burgen said. The terminals will be tied directly to U. S. National's computer, enabling immediate deposit, withdrawal, transfer of funds. Customers are being issued BancoCards. The one-year testing program is to commence about August 4. Northwestern National Bank of Omaha, also a Banco bank, will participate in using the terminals since it is a national bank. Banco's third Omaha bank, Center Bank, cannot tie in to the service until Nebraska's new enabling law for state banks becomes effective next January 1.



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Illinois News

CHICAGO: The board of Sears Bank and Trust Company has asked the shareholders to approve a plan whereby Sears Bank will become a wholly-owned subsidiary of Midland Bancorp., Inc., a new corporation organized by the bank's management to become a bank holding company.

Minnesota News

The 85th annual convention of the Minnesota Bankers Association is underway in Duluth. A full report with pictures will be featured in the July issue of the Northwestern Banker.

RANDALL: Bruce Eckblad is the new president of the Randall State Bank. He formerly was vice president and manager of the Faribault National Bank.

South Dakota News

BELVIDERE: New officers at the Belvidere State Bank are: L. A. Pier, chairman; J. E. Pier, president and J. C. Leutenegger, vice president and cashier. The changes are necessary due to the resignation of L. A. Pier as president.

Colorado News

DENVER: Steve Sheridan has been elected an assistant vice president of Security National Bank.

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[Continued from page 1]

detached facility, and because this machine is beyond the geographical



Bob Bueneke

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limit of a permitted detached facility, the machine is not authorized by Colorado law," the decision added.

The First National of Fort Collins currently operates an electronic teller device on the premises of its main bank and has one detached facility nearby.

The judge went on to say that while there is an "obvious similarity" between the use of the machine to obtain a cash advance and the cashing of a check made out to the customer himself, the "sameness" is not "controlling."

"To instruct the bank by depressing the keys on this Docutel machine is not the writing of an order for the bank to pay upon demand," the judge said. "It is comparable to the wire transfer of funds by commercial customers, and that is not considered to be the payment of a check."

The judge also concluded that the machine doesn't lend money when it makes a cash advance. "There is no apparent functional difference between this use of a bank credit card and the use of such a card to obtain cash, services or products from a retail trader who accepts such cards," the judge said.

Noting that his decision was based on a "literal" application of the McFadden Act, Matsch said the comptroller's interpretive ruling permitting the machine to receive deposits "is erroneous and the permission given to the defendant bank to make use of the machine is invalid."

At the same time, the judge said the comptroller's ruling applied to the machine's other functions is valid since none of those other functions would make it a branch bank.

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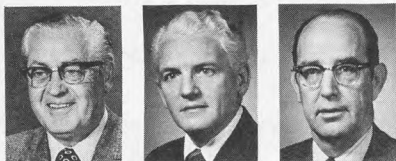
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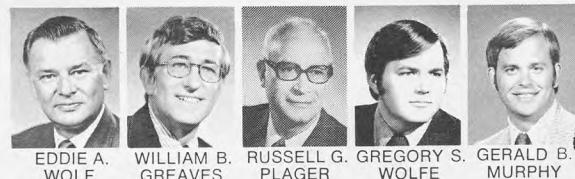
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