

NORTHWESTERN Banker Newsletter

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August 11, 1975

Judge Halts Comptroller's CBCT Ruling

Declaring that the Comptroller of the Currency acted illegally on December 12, 1974, and May 9, 1975, when he issued regulations authorizing off-premise electronic banking terminals, District Judge Aubrey E. Robinson, Jr., ruled in Washington, D. C., on July 31 that national banks operating such EFT facilities must discontinue them in states where this is contrary to state law.

After the same court rejected a request the following day for a stay of injunction, the Justice Department went to the Court of Appeals the past week on August 6 seeking a stay while the case is appealed. The judge's decision on that appeal is not expected until sometime this week and possibly not until next week. It is expected the case will be carried quickly to the United States Supreme Court.

The suit ruled on by Judge Robinson was filed as Civil Action 75-0089 in the United States District Court in Washington, D. C., by the Independent Bankers Association of America, and several small independent banks. The decision was considered a major victory for the IBAA in its battle to shut off all EFT activity, declaring that it is branch banking. Judge Robinson upheld this view, stating that the customer bank

communications terminals are, in fact, branches despite the Comptroller's rulings of December 12 and May 9 to the contrary.

IBAA authorities are reported to have been surprised by the extent of the decision, especially Judge Robinson's direct rebuttal of Comptroller Smith's basic premise that CBCTs are not branches.

Throughout the decision, Judge Robinson relied heavily on the Supreme Court's ruling in the 1969 *Plant City vs Dickinson* suit (1st National Bank in Plant City, Fla.—39-U.S. 122 1969), as well as the *McFadden Act* enacted by Congress nearly a half century ago. In the *Plant City* case, the Court ruled that the bank could not utilize armored car service to pick up deposits. Based on these decisions, Judge Robinson said that activity carried on at the CBCTs is activity "carried on at the main office" and therefore is branching. In those states prohibiting branching, or with curbs on it, national banks must cease and desist, he ordered.

In his original regulation issued December 12, Comptroller James E. Smith authorized national banks to operate unmanned terminals or POS terminals at any location in the state, or even across state lines to follow a marketing area. The May 9 ruling modified the ruling to

authorize a bank to operate such terminals exclusively within 50 miles of the main office or nearest branch, but outside the 50 miles it must be available for sharing at a reasonable cost with one or more financial institutions.

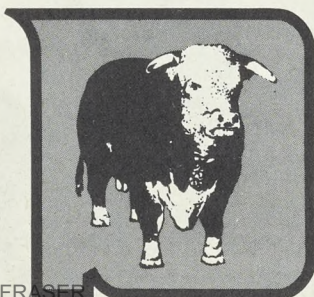
The Comptroller's office reports more than 70 CBCTs in operation by 26 national banks in a number of states since his ruling became effective July 1, 1975. The bulk of these appear to be centered in the midwest—primarily Omaha, Lincoln, Des Moines and Chicago.

Attorneys for various state associations were reviewing Judge Robinson's decision last week, along with their own state laws, to determine whether such CBCT activity in their states is in compliance or illegal.

In Nebraska, the EFT enabling law passed by the state legislature earlier this year authorizes such electronic activity for state banks, but the effective date is next January 1, 1976. Consequently, national banks have opened CBCT facilities in numerous retail locations in Omaha, Lincoln, Fremont and Wahoo, while state banks must await the January 1 effective date to compete or join these existing systems. The Nebraska law specifically declares these electronic units are **not** branches. Nebraska

CBCT RULING.
[Turn to page 5, please]

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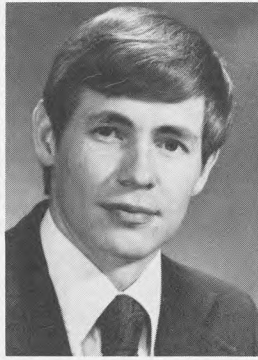


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Iowa News

ATLANTIC: Darryl Peterson has been promoted to assistant vice president of the First Whitney Bank and Trust. He has been a cashier with the bank for 19 years. Other promotions announced include Jim Burnside from assistant cashier to cashier and Marion Kunze to assistant cashier.

CARLISLE: The application of the Hartford-Carlisle Savings Bank for consent to exercise limited trust powers has been approved.

MOUNT PLEASANT: The Henry County Savings Bank will hold an open house for area bankers at their new location, 301 East Washington Street, Thursday, August 14.

SIBLEY: T. Robert Nelson has resigned as president and director of the Sibley State Bank. Bruce Lauritzen of Omaha, Nebr., was elected president. David Wier was elected a director and promoted to assistant vice president. Mr. Lauritzen is vice president and director of the First National Bank of Omaha and will not be active in the operation of the bank. Mr. Nelson announced that he resigned in order to have more time to actively pursue his many personal business interests.

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Nebraska News

FALLS CITY: Merle L. Veigel will join the First National Bank September 1 as assistant vice president. He formerly was with the Federal Deposit Insurance Corporation as a bank examiner.

KEARNEY: First National Bank & Trust Co. has increased its capital from \$800,000 to \$1 million by the issuance of additional stock.

OCONTO: Funeral services were held recently for Charles J. Devine, 68, chairman of The Farmers Bank. He joined the bank in 1926 and held the positions of cashier and president before being named chairman July 1, 1975. Frank J. Devine, with the bank since 1950, has been promoted from vice president to president.

SCRIBNER: The Board of Governors of the Federal Reserve System has announced its denial of the application of Scribner Bancshares, Inc., to become a bank holding company through acquisition of Scribner Bank.

STROMSBURG: Fred Guggenmos of Spencer, Ia., is the new president of the First National Bank after purchasing interest from Marjorie Kjelson, who remains as chairman. Mrs. Kjelson has been president for eight years taking over the duties

at the death of her husband, the late A. V. Kjelson. Mr. Guggenmos has served as a bank examiner and as president of the Spencer National Bank, Spencer, Ia.

Minnesota News

The Independent Bankers Association of Minnesota will hold its fourteenth annual convention August 13-16 at Arrowwood Lodge in Alexandria. Topics of discussion will include the work of national banking organizations, bank holding companies and Fed policy, the strength of Minnesota's independent banks, the state of the economy, and automated, off-premise banking. Registration begins at 11 a.m. Wednesday, August 13. The first business session will begin at 9:30 a.m. August 14.

DULUTH: Lyle Bourdon has been elected vice president of the Duluth National Bank. Mr. Bourdon formerly was assistant vice president of the personnel division of First Bank System, Minneapolis-based bank holding company and parent company of Duluth National.

ST. JAMES: First National Bank has announced the promotions of Eldo Beckmann from cashier to vice president and Gary Schutz from assistant cashier to cashier.

ST. PAUL: John H. LeMay has joined the Minnesota State Bank as senior vice president. He previously was with the Commercial State Bank of St. Paul as vice president of commercial lending.

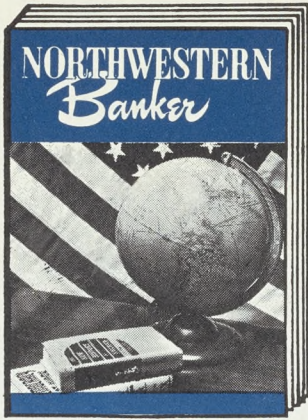
Illinois News

CHICAGO: The application of the Community Bank of Lawndale for Federal deposit insurance has been approved. Capital accounts of the bank total \$2 million.

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AUBURN: A permit to organize has been issued to Auburn Peoples Bank, Illinois Route 4 and Jefferson Street. The state bank's total capitalization of \$800,000 will consist of \$300,000 in both capital and surplus and \$200,000 in reserve. There will be 40,000 shares of stock with a par value of \$7.50 each. Organizers are Darlene H. Fuchs, Farmersville; Jack Morris, Pawnee; Leonard Courty, Jr., Oscar M. Lane, John E. Michelich, Delmar Neuman, Robert D. Shaffer, all of Auburn.

Wyoming News

GILLETTE: The State Examiner has announced his decision denying the application for the Bank of Wyoming here for a state bank charter.

Colorado News

COLORADO SPRINGS: Mountain Banks, Ltd., has received permission to acquire Fort Collins National Bank.

North Dakota News

BUXTON: First State Bank has increased its capital stock from \$105,000 to \$125,000 by cash subscription.

PARSHALL: Peoples State Bank has changed its name to Peoples Bank and Trust.

AG REP WANTED

Progressive Iowa county seat bank of \$25MM seeks qualified agricultural representative. Write Box TJO, c/o NORTHWESTERN BANKER, 306 15th St., Des Moines, Iowa 50309.



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RUGBY: Merchants Bank has increased its capital stock from \$250,000 to \$400,000.

South Dakota News

ARTESIAN: Live Stock State Bank has increased its capital stock from \$150,000 to \$300,000.

CBCT RULING.
[Continued from page 1]

law also prohibits branch banking. The question now is whether national bank CBCT activity is legal or not under the ruling. If national banks in Nebraska should be ordered by the Comptroller to discontinue their CBCTs at this time to comply with Judge Robinson's ruling, will they be able to renew this service next January 1 under the Nebraska law? Omaha bank officials last week said their

counsel is searching for answers to these questions.

In Iowa, the law enacted earlier this year by the legislature authorized state banks to commence CBCT service July 1, 1975.

Presently, the Iowa-Des Moines National Bank, with five CBCTs in operation, is the only Iowa bank providing this electronic service.

In Chicago, Continental Bank has two CBCTs in operation and a court test of the entire matter is scheduled for its next hearing on September 8. The bank had announced it would expand the POS service through a city-wide chain of 62 Dominick's supermarkets, but agreed to suspend this activity until the court rules on whether these are branches and, therefore, in violation of Illinois law which specifically prohibits branch banking.

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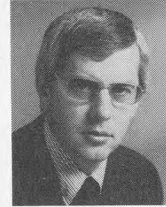
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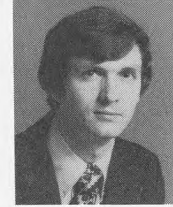
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Reply in strict confidence in writing to: James E. Barry, Senior Vice President, United National Bank, 14 St. Joe St., Box 2290, Rapid City, S.D. 57701, PH: 605/343-9230, or Loren D. Gerleman, Vice President-Cashier, United National Bank, P.O. Box 1088, Sioux Falls, S.D. 57101, PH: 605/336-9206.

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