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TO PROHIBIT BANKS FROM PERFORMING CERTAIN NONBANKING SERVICES

GOVERNMENT

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON BANK SUPERVISION AND INSURANCE

OF THE

COMMITTEE ON BANKING AND CURRENCY HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION.

ON

H.R. 112

A BILL TO PROHIBIT BANKS FROM PERFORMING CERTAIN
NONBANKING SERVICES, AND FOR OTHER PURPOSES

H.R. 117

A BILL TO PROHIBIT BANKS FROM ENGAGING IN THE
BUSINESS OF PERSONAL PROPERTY LEASING

H.R. 10529

A BILL TO PROHIBIT BANKS FROM PERFORMING
PROFESSIONAL ACCOUNTING SERVICES

MARCH 9, 10, AND 15, 1966

Printed for the use of the Committee on Banking and Currency



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1966

62-035 O

AUTHENTICATED
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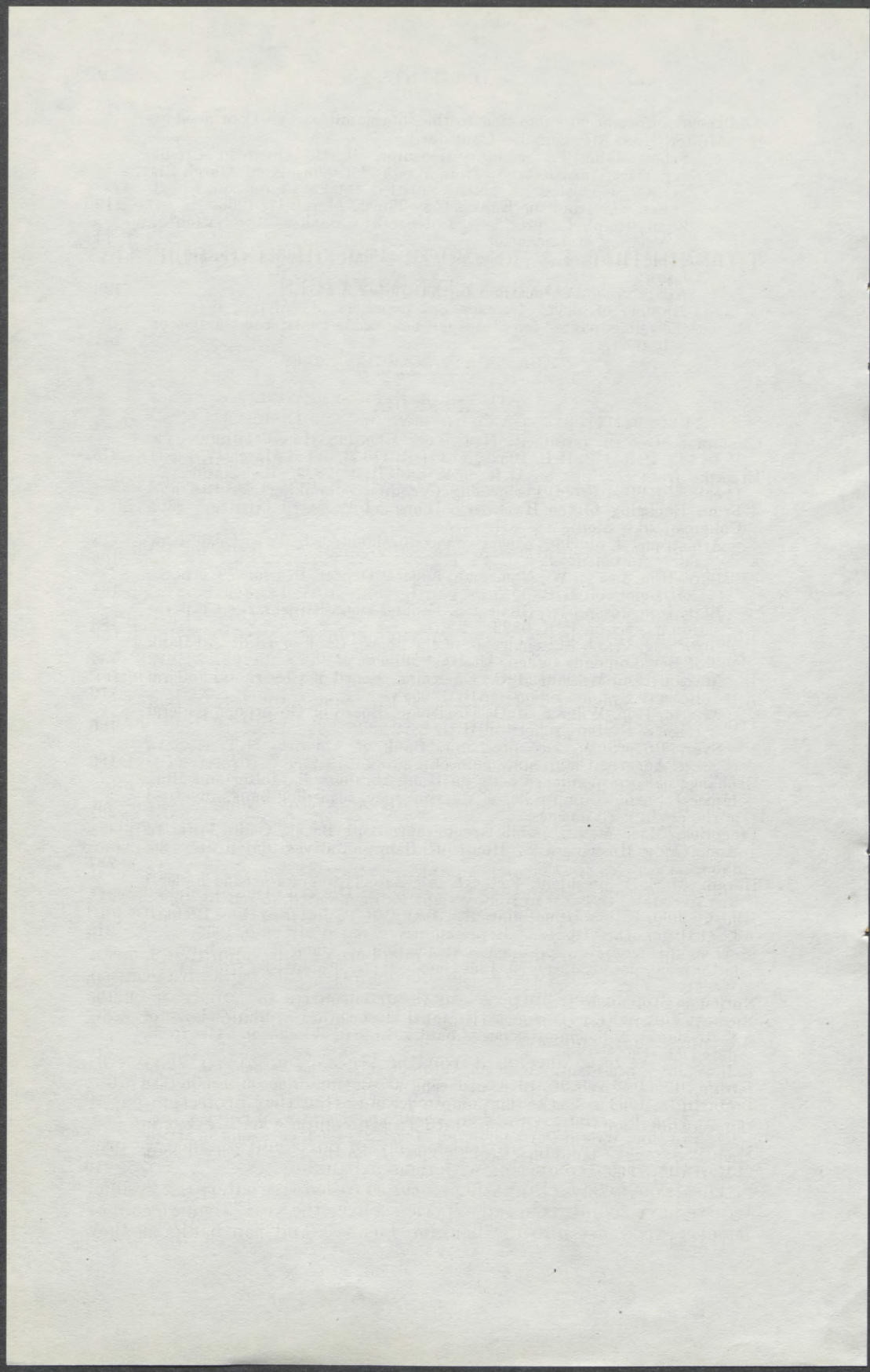
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TO PROHIBIT BANKS FROM PERFORMING CERTAIN NONBANKING SERVICES

WEDNESDAY, MARCH 9, 1966

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BANK SUPERVISION AND INSURANCE
OF THE COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:30 a.m., in room 2220, Rayburn House Office Building, Hon. Abraham J. Multer (chairman of the subcommittee) presiding.

Present: Representatives Multer, Moorhead, St Germain, Weltner, and Talcott.

Mr. MULTER. Good morning, gentlemen. May we please be in order.

We have met this morning to consider two bills, H.R. 112, to prohibit banks from performing certain nonbanking services, and for other purposes; and H.R. 117, to prohibit banks from engaging in the business of personal property leasing; and, together with the latter bill, we will consider H.R. 10529, on the same subject, which was introduced by request, so that the full text of both bills will be before us at the same time.

I would like to indicate that the subcommittee is prepared to hear any and all testimony that may be offered not only that which relates to the two bills, as they attempt to prohibit banks from engaging in nonbanking services, but also on any and all relevant and material information that would indicate that banks are engaging in any other services that are not properly banking services.

That necessarily includes such things as the credit-card business and any other matters that witnesses may find appropriate to refer for our attention.

It is the feeling of many of the members of the committee, I mean the full committee, as well as the subcommittee, that banks are granted charters for limited purposes, in the nature of a monopoly or quasi-monopoly in their communities, and that they ought not to engage in a business that is not strictly banking.

Just as we have developed over the years a philosophy of government that banks should be protected against nonbanks performing banking services, at the same time we feel that that protection ought not clothe them with the right to freely compete with everyone else in every other segment of the economy of our country, since we preclude others from competing with them in banking.

This is obviously a limitation on the so-called free enterprise system, but we have found from sad experience over the years that we cannot let everybody get into the banking business and run banks as they

please without regulation and without control. As we give them, the banks, or the banking industry, this protection, at the same time we must protect the free enterprise system so that we do not permit these institutions which have a unique position in our economy from unfairly competing with those who do not have the same privileges, advantages, and protection that we give to the banking industry.

Unfortunately, after we set these hearings for today, the announcement was made that the newest member of the Federal Reserve Board would be sworn into office this morning at 10:30, and many of our members felt that they should attend those ceremonies. We hope that they will be able to get here before these hearings are concluded this morning. In any event, we will continue again tomorrow with witnesses who are not available today.

Mr. St Germain, do you want to make any statement at this time?

Mr. St GERMAIN. At the proper time, Mr. Chairman, I would certainly like an opportunity to give a quasi-introduction to the first witness, if it is in order to do so. I will wait, if you desire.

Mr. MULTER. I will ask you to do that in a moment.

We will at this point, spread upon the record in full the bills that we are considering.

We should also call attention to the fact that on February 25 and 26, 1964, this Subcommittee on Bank Supervision and Insurance conducted a rather full hearing on the same subject. At that time the bills before us were H.R. 9548, to prohibit banks from performing certain nonbanking services; and H.R. 9822, to prohibit banks from engaging in the business of personal property leasing.

Those statements that appear in that record, together with relevant parts of the testimony, will be reproduced as a part of these hearings, and witnesses who may be coming in again today or tomorrow, and who have heretofore testified at length on the subject, are requested to submit their statements for the record, and of course give us the benefit of any additional information that they have acquired since the last hearings.

(The statements referred to may be found in the appendix beginning on p. 179.)

Mr. MULTER. We also have two letters from the Comptroller of the Currency, dated March 8, 1966, which we will make a part of the record, and if the committee decides to hear Mr. Saxon orally, we will give him another date on which he can appear. Unfortunately, he is not available today.

(H.R. 112, H.R. 117, and H.R. 10529, and agency reports from the Comptroller of the Currency and Federal Deposit Insurance Corporation, follow:)

[H.R. 112, 89th Cong., 1st sess.]

A BILL To prohibit banks from performing certain nonbanking services, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no bank of any type described in section 2 of this Act may perform any clerical, administrative, bookkeeping, statistical, accounting, or other similar services for its depositors, borrowers, or other customers, except to the extent that such services are a necessary incident to the proper discharge of lawful functions of such bank as a depository, lender, trustee, or agent.

SEC. 2. This Act shall be administered and enforced in the case of—

(1) national banks or banks operating under the code of laws for the District of Columbia, by the Comptroller of the Currency;

(2) banks (other than banks described in paragraph (1)) which are members of the Federal Reserve System, by the Board of Governors of the Federal Reserve System; and

(3) banks (other than banks described in paragraph (1) or (2)) whose deposits are insured by the Federal Deposit Insurance Corporation, by the Board of Directors of the Federal Deposit Insurance Corporation.

The Federal banking agencies specified in this section are respectively authorized to make such rules and regulations as may be necessary to carry out the purposes of this Act.

[H.R. 117, 89th Cong., 1st sess.]

A BILL To prohibit banks from engaging in the business of personal property leasing

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no bank of any type described in section 2 of this Act may be the lessor of any personal property under any circumstances or by any means as a result of which such bank—

(1) performs or is compensated for any services other than the lending of money or advancement of credit with respect to such property, or

(2) acquires or may acquire any interest in such property other than as security for the repayment to such bank of money or credit advanced by it together with interest and other charges for exclusively financial services, or may realize from such property in the event of default more than such repayment and charges.

SEC. 2. This Act shall be administered and enforced in the case of—

(1) national banks or banks operating under the code of laws for the District of Columbia, by the Comptroller of the Currency;

(2) banks (other than banks described in paragraph (1)) which are members of the Federal Reserve System, by the Board of Governors of the Federal Reserve System; and

(3) banks (other than banks described in paragraph (1) or (2)) whose deposits are insured by the Federal Deposit Insurance Corporation, by the Board of Directors of the Federal Deposit Insurance Corporation.

The Federal banking agencies specified in this section are respectively authorized to make such rules and regulations as may be necessary to carry out the purposes of this Act.

[H.R. 10529, 89th Cong., 1st sess.]

A BILL To prohibit banks from performing professional accounting services

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no bank or association of any type described in section 3 of this Act may perform any professional accounting services for its depositors, borrowers, or other customers, except to the extent that such services are a necessary incident to the proper discharge of lawful functions of such bank or association as a trustee or agent.

SEC. 2. As used in this Act, the term "professional accounting services" shall include any of the following:

(1) the design, installation, and supervision of internal systems of record-keeping in terms of money or internal controls of financial data;

(2) the use of discretion in recording business transactions of a financial nature;

(3) the preparation of financial statements from books of account;

(4) the preparation of income tax returns, whether Federal, State, or local; or

(5) the conduct of audits and the preparation of reports based on audits.

SEC. 3. This Act shall be administered and enforced in the case of—

(1) national banks or banks operating under the code of laws for the District of Columbia, by the Comptroller of the Currency;

(2) banks other than banks described in paragraph (1) which are members of the Federal Reserve System, by the Board of Governors of the Federal Reserve System;

(3) banks other than banks described in paragraph (1) or (2) whose deposits are insured by the Federal Deposit Insurance Corporation, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(4) Federal savings and loan associations and all other insured members of the Federal Savings and Loan Insurance Corporation, by the Federal Home Loan Bank Board.

The Federal banking agencies specified in this section are respectively authorized to make such rules and regulations as may be necessary to carry out the purposes of this Act.

THE COMPTROLLER OF THE CURRENCY,
THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, March 8, 1966.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance, Banking and Currency Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: You have requested our views on H.R. 112, which would prohibit banks from performing certain nonbanking services, and H.R. 10529, to prohibit banks from performing professional accounting services.

We strongly oppose the legislation because we do not agree with its fundamental purpose, which is to constrict by governmental fiat the business operations of commercial banks. Why should not a bank be permitted to perform whatever clerical, administrative, bookkeeping, statistical, etc., services for its customers which its management believes can be performed profitably? We can understand the opposition of groups who imagine they would be hurt competitively by such activities but we see no legal or policy basis for eliminating such competition.

We do not think the argument of some accountants that banks are transgressing on their domain is tenable. The practice of accounting is regulated by State laws throughout the country. Any acts by a corporation within a State's borders which were violative of such licensing statutes, would be subject to prosecution. This has not happened to date because the type of services which we are concerned about here are not in fact professional services, but are repetitive, clerical-type functions which are susceptible to automation. This whole problem is a creature of the automatic data processing machine. The claim of unauthorized accounting is also being raised as a smokescreen by some data processing machine interests who are no more qualified as accountants than are bankers.

The spirit of this bill is directly at odds with the previously expressed intent of Congress as long ago as 1864 and as recently as 1962. In 1864, in the National Bank Act, Congress stated that national banks have "all incidental powers as shall be necessary to carry on the business of banking" (12 U.S.C. 24, par. 7). Congress in 1864 wisely did not attempt to define the business of banking as it then existed. They foresaw that the business of banking would change and develop with the passing years.

The sweeping nature of the technological changes in the banking business is strikingly illustrated by the necessity for the passage almost a hundred years later of H.R. 8874, the bank service corporation bill (Public Law 87-856, 87th Cong., Oct. 23, 1962) which deals with the virtual necessity of the use today by banks of expensive automatic equipment.

H.R. 112 and H.R. 10529 do just what Congress in its wisdom in 1864 would not do—attempt to define the business of banking. This definition which is limited to acting as "depository, lender, trustee, or agent" is entirely inadequate as a description of modern commercial banking. In any event, we do not think it is any more desirable to attempt to legislate such a definition in 1966 than it was in 1864.

In 1962, Congress passed H.R. 8874, the bank service corporation bill which empowered banks to invest in corporations created for the purpose of rendering clerical services to banks. The proponents of H.R. 8874 thought that the bill was necessary because of existing prohibitions against national banks owning the stock of corporations.

There was no question concerning the banks' right to perform these services directly for their customers on their own equipment. We regard it as highly unfortunate that a provision was added to H.R. 8874 at the last minute, prohibiting bank service corporations from performing any services for anyone other than banks.

The Senate Banking and Currency Committee, in its reports on H.R. 8874, had this to say on the subject of the increasing use of automation equipment by banks:

"The demand for bank services is increasing at an extremely rapid rate. Many banks have found it difficult to acquire adequate personnel to handle this mounting workload. Testimony indicated that the volume of checks in circulation has increased tremendously during the past two decades. It was estimated that the check volume in 1939 was 3.5 billion. The volume is increasing at the rate of about one-half billion items per year. By 1970 the number of checks is expected to be at an annual rate of 22 billion. In addition to check handling there is a need for automation of other bank services. Some banks are now processing their savings accounts, computing payrolls, calculating other credits and charges, and preparing and mailing statements through the use of automatic equipment.

"The high cost of equipment makes it impossible for the majority of banks to buy this equipment. In some cases they are able to lease it, or to have their material processed by firms owning this equipment. But in many cases these solutions are not practicable or desirable.

"Larger banks are generally able to afford this automatic equipment, but smaller institutions find the cost prohibitive. According to a study made by the Federal Reserve System, nearly all large banks in the group they surveyed are now using some form of automated equipment or plan to do so within the next 3 years. However, the ratio of automating banks to the total number of banks falls rapidly as one moves down the scale in bank size. Only about one-fifth of the banks with deposits of \$5 to \$50 million have automation plans and among smaller banks the proportion is negligible. Thus, it is becoming more and more difficult for smaller banks to compete with larger banks in offering complete and efficient banking services to their customers. Testimony was received which indicated that, unless a satisfactory means is devised whereby smaller banks may acquire benefits of automated equipment, many of them may be absorbed by larger banks or compelled to merge with other banks in the area."

We believe it would be quixotic for the Congress to attempt now to stem the performance of automation services for their customers by banks. Banking, like any industry, is entitled to the benefits of technological change and, in our opinion, it would be wrong and perhaps futile for Congress to attempt to shackle this industry as does this bill.

We strongly urge against enactment of H.R. 112 and H.R. 10529. With your permission we would also like to insert in the record the attached article from the January 1966, edition of the *Business Lawyer* written by Ralph F. Huck, a well-known banker, scholar, and member of the Illinois bar; chairman of the Sections Committee on Banking of the American Bar Association.

Sincerely,

JAMES J. SAXON,
Comptroller of the Currency.

[From the *Business Lawyer*, January 1966, pp. 537-544]

WHAT IS THE BANKING BUSINESS?

(By Ralph F. Huck,¹ Chicago, Ill.)

Except for controversies and discussions as to how to apply antitrust laws to the banking business, it is fair to say that the controversies presently going on, both at the administrative and the legislative level, and the great differences of opinion that have been engendered from those controversies, all revolve around the question of what is "the banking business"?

Fortunately, in the interests of uniformity and comparative simplicity, there is a single phrase which appears in the Federal statutes and in the statutes of most States, which forms the basis for legal analysis of the question. A few examples might be cited. The National Bank Act (12 U.S.C. 21) provides that corporations ("associations") formed under it are for the purpose of "carrying on the business of banking." The New York statutes provide (B.L. 96) that banks may exercise all incidental powers necessary to carry on the "business of banking." The Illinois law provides that corporations may be formed under

¹ Member of the Illinois bar; chairman of the Sections Committee on Banking.

the Banking Act for the purpose of "doing a general banking business." The proposed new banking code in Pennsylvania would expressly recite that banks could exercise all powers incidental to the "conduct of the banking business," and the commentaries to the proposed code state that this express recital "supplies what was left to implication in the prior code." These examples could be repeated from the laws of most States.

Before the "business of banking" can be dealt with from a legal standpoint, it is necessary to consider the basis of presently conflicting views which if not resolved prevent the term from being considered in and by itself for what it really is and what it really describes.

It is strongly contended by some that in considering what the incidental or implied powers of a bank are, the courts and administrative officials cannot start with the assumption that the thing or concept against or from which the extent of incidental powers is to be measured or deduced is the simple and broad phrase, "business of banking" or "banking business." On the contrary, there are those who contend that in determining what are the necessarily implied or incidental powers, you must start with much more limited phrases or concepts than the broad term, "banking business," and that only from the more limited phrases or concepts can you proceed to measure or deduce the necessary incidental powers.

Those who insist on this more limited or narrow approach do so on the basis of what first appears to be a plausible argument. The purpose of this article is to examine those contentions and to show that from a legal standpoint they are not well founded. The wording of the National Bank Act and the Federal Reserve Act will be principally used to illustrate and specifically apply the arguments, since those laws are of most general application.

The proponents of this narrower view above referred to first advance the well-settled principle of law to the effect that:

"the extent of the powers of national banks is to be measured by the terms of the Federal statutes relating to such associations, and they can rightfully exercise only such as are expressly granted, or such incidental powers as are necessary to carry on the business for which they are established * * * (and that) an incidental power can avail neither to create powers which, expressly or by reasonable implication are withheld, nor to enlarge powers given; but only to carry into effect those which are granted."²

Having first asserted the incontrovertible principles of law above quoted, the proponents of the narrow view of the incidental powers of banks then turn to the statutes themselves and assert that the phrase or concept from which the incidental powers are to be deduced or against which the incidental powers are to be measured is not the broad and simple term "banking business" or "business of banking," but rather a series of much more limited and specific phrases or concepts.

The proponents of this narrower view accomplish this by ignoring the simple expression found in 12 U.S.C. 21 that national banks are formed for the purpose of "carrying on the business of banking," and by turning instead directly to the wording of paragraph "Seventh" of 12 U.S.C. section 24, which provides that a national bank shall have power:

"Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal property; and by obtaining, issuing, and circulating notes according to the provisions of this chapter."

Relying on the words above quoted from section 24, and at the same time ignoring both punctuation and the historical background of those words, the contention is then made that the above quotation is in effect a statutory definition of what the banking business is, and that in determining what the incidental powers of a bank are, a court or administrative officer is limited to determining whether a given act was incidental to or implied from only the express powers which are preceded by the preposition "by" in the above quotation from paragraph "Seventh."

² *First National Bank v. Missouri*, 263 U.S. 640.

Put another way, they assert that the question is not whether the act of the bank under consideration is incidental to or implied from the power to carry on the "business of banking," but rather the question is whether the act being considered is incidental to or implied from the power of "discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt," or is incidental to or implied from the power of "receiving deposits," or is implied from or incidental to the power of "buying and selling exchange, coin, and bullion," and so on. In taking and asserting this position, the proponents of this view avoid considering what is the "business of banking" in the broad sense, and instead are able simply to deal with several separate, and by no means inclusive, aspects or facets of the "business of banking." The result is, of course, to justify a narrow interpretation of incidental powers and to avoid even considering or mentioning the true function of the "banking business" considered as a whole, by the simple expedient of mentioning and considering a few, but by no means all, of the facets of the banking business.

There is no legal basis for this approach, and it ignores both the grammatical and substantive construction and the historic interpretation of the words in question.

It might be first noted that a semicolon appears after the initial clause of paragraph Seventh of section 24: "To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; * * *" and that each of the subsequent clauses in that first sentence are also separated by semicolons. It is an established principle of statutory construction that every clause separated by a semicolon is of coordinate value, and that therefore each clause must be read separately in the sense that each clause must be given its own separate value and effect.³ The proponents of the narrow view would read this first sentence of paragraph "Seventh" as though it provided that banks shall have incidental powers to carry on the business of banking so long as and to the extent that such business consisted of and was limited to "discounting and negotiating promissory notes, drafts, bill of exchange, and other evidences of debt, receiving deposits, buying and selling exchange, coin, and bullion, and loaning money on personal security."

Obviously, such an attempted construction reaches the result desired by the proponents of the narrow view by eliminating separate consideration of what the simple but broad term "business of banking" encompasses; but such an attempted construction equally obviously violates the settled rule of statutory construction above referred to.

It is also interesting and pertinent to note that the use of semicolons throughout the first sentence of paragraph "seventh" is not a mere accident. Prior to the enactment of the Revised Statutes of 1873 either no punctuation was used at all to separate the term "business of banking" in the first portion of what is now paragraph "seventh" from the succeeding word "by," or if punctuation appeared at that point only a comma was used. With the law in that situation the court in the case of *Shinkle v. First National Bank of Ripley*,⁴ held that the words "by discounting, etc.," were not to be read as limiting the modes of exercising incidental powers granted, but as limiting and defining the kind of banking which was authorized by the act, and that the act should be construed to give the national bank "all such incidental powers as shall be necessary" for the purpose of conducting the kind of banking thus authorized. This is tantamount to the position the proponents of the narrow view now take. But by the enactment of the Revised Statutes of 1873 a semicolon was inserted as it now appears in paragraph "seventh" immediately after the term "business of banking" and before each of the words "by" in the sentence to emphasize the very point here made that the incidental powers must be measured against the simple broad term "business of banking" and not against, merely, the separate facets or mechanical parts, not all inclusive, of banking which are described by the clauses beginning with the word "by."

Put another way, the obvious intent of Congress in inserting the semicolons was to give full effect to the doctrine of the coordinate value of the clauses separated by the semicolon which is described in *McLeod v. Nagle* above referred to. But to avoid any charge that the interpretation here being contended for is merely technical or grammatical rather than substantial, it should be pointed out that

³ *McLeod v. Nagle*, 48 F(2d) 189.

⁴ 22 Ohio St. 516.

historically the reason for inserting the clauses beginning with the word "by" was not for the purpose of effecting a limiting definition of "banking business" nor to restrict the doctrine of incidental powers to something less than the full meaning of "banking business."

The National Bank Act in this particular provision at least was modeled on the then existing New York law. In the well-considered case of *Curtis v. Leavitt*,⁵ it was pointed out (p. 57) that prior to 1825 charters (granted by special legislation only) of banks did not attempt to enumerate or describe banking powers beyond the mere use of the term "banking business." In 1836 the use charters granted by special legislation ceased and in 1838 a general bank incorporation law was passed in New York, but by that time various other pieces of general legislation existed which had prohibited corporations from performing, or regulated individuals in performing, various things which traditionally were part of the banking business, such as receiving deposits and maintaining offices for discount. Accordingly, said the court in that case, it became "eminently useful," although "not indispensable" to spell out expressly in the new 1838 bank general incorporation law that corporate banks formed thereunder had the power to do the specific things which at that time other general legislation had denied corporations in general the right to do.

Thus in effect the specifications in the New York banking laws which were copied into the National Bank Act arose largely out of the fact that restraining laws in other areas forbade corporations not incorporated under the banking laws from doing certain specific things which the legislatures felt were the particular parts (although not all the parts) of the "business of banking" which were not to be done by corporations unless they were subject to regulation under the banking laws. This same situation exists to the present day. There are many general laws forbidding persons and corporations from doing certain things, although certainly not all things, generally associated with the business of banking, and accordingly when the legislature addresses itself to a banking law it "becomes useful" although "not indispensable" specifically to recite in the banking law itself, those things from which others have been excluded, without intending thereby to limit what the term "business of banking" means. Surely it cannot be reasonably argued that the legislature intended that banks could do only those things which were expressly denied to other corporations, any more than it can be reasonably contended that because banks are expressly given the power to do certain things, such as lending money, therefore no other corporation may or should be permitted to do those same things, with the result, as an example, that all loan companies and finance companies and savings and loan associations should be abolished.

If the foregoing establishes, and it is submitted that it does, that the first clause of paragraph "seventh" can and must be considered separately and divorced from the remaining clauses preceded with the word "by" in that sentence, then it becomes clear that the question of what is the "business of banking" can and must be considered separately and in and of itself in determining what the incidental powers of banks are. It is submitted that the following definition is as sound today as when it was published and forms a continuing sound basis for and from which to measure and deduce the incidental powers of banks:

"The business of banking, in its widest sense, is to collect in banks or masses the capital of the community, that which is either money or can readily be turned into money, and upon the capital so collected, to build up by proper management and machinery the credit which will extend and enlarge the usefulness to the community of its actual money capital. * * * Banks are constituted to make capital circulate, not to lock it up * * *."

A banker of today would perhaps put it more concisely by saying that the function of a bank and of the banking system is to mobilize money resources from hundreds and thousands of sources and to in turn put the money to work wherever it is needed by making credit available in whatever form best suits each particular situation. Essentially it was this principle which the court upheld and applied in *Block v. Pennsylvania Exchange Bank*.⁷ The court held that the test was not the particular method or means used by the bank to extend its credit, but the test rather was whether the act done related to or was an act in the course of the—

"substitution of credits which is of the essence of the banking function * * *."

⁵ 15 N.Y. 2 (1857).

⁶ Knox, "History of Banking in the United States," (rev. ed. 1900).

⁷ 253 N.Y. 227.

Whatever is an appropriate and usual incident to this substitution or exchange of credits, instead of being foreign to the functions and activities of banking, is in truth of their very essence. It is the end for which a bank exists."

The wisdom and necessity of expressing the power of banks in the simple and broad terms of carrying on the "business of banking" and the absolute impossibility of trying to describe the particular methods or means whereby in a given place at a given time and under given circumstances the banking function would, could, or should be carried out has always been recognized. In *Curtis v. Leavitt*, above cited, the court said:

"The implied powers (of a bank) exist by virtue of the grant (to do the business of banking), and are not enumerated and defined; because no human sagacity can foresee what implied powers, may in the progress of time, the discovery and perfection of better methods of business, and the ever-varying attitude of human relations, be required to give effect to the express powers. They are, therefore, left to implication."

That was said in 1857 and more than 100 years later it still explains and justifies means and methods used by banks in mobilizing funds and making credit available which were not dreamed of then or even 20 years ago. When the fundamentals of the "business of banking" as above defined are kept in mind, and it is also recognized that the use of leases by the business community has grown and become accepted as a convenient financing medium and as an advantageous procedure from a tax standpoint, it becomes clear that lease financing by banks and the ownership of property for the purpose of leasing to a customer are no more novel or extraneous to the extension of credit function of banking, and no less incidental to the "business of banking," than was the purchase by a bank of conditional sale paper 60 years ago, or the taking of a chattel mortgage, a thing the common law did not even recognize, 200 years ago. In the same vein, the use by a bank of the idle time of its computers to serve others for a profit is no more extraneous to the "business of banking," and no less incidental thereto, than the building of a skyscraper as a banking house, even though only a small part is to be used by the bank. The propriety of a bank doing the latter was laid to rest in 1915 in the case of *Fourth National Bank v. Stahlman*.⁸

This discussion might well conclude with one other area that almost invariably comes up when the subject of bank powers is discussed. Because of the continuing growing complexities of tax laws and "doing business" laws of the various States, it becomes increasingly necessary or prudent that banks carry on some of their activities through the use of subsidiary corporations. The question of the power of banks to have subsidiaries (the Federal law uses the word "affiliates") for this purpose must be divorced from the power of a bank to trade or deal or speculate in stocks. Clearly banks have no power to do the latter and it is prohibited both by general case law and by express statutory provisions. But it seems equally clear that given that the activities of the subsidiary (i.e., "affiliate") are limited to things which if done by the bank itself would be included in the "business of banking," the power of banks (at least national banks) to have subsidiaries or "affiliates" exists not only as incidental to the "business of banking" but also as a result of express statutory sanction, provided always that section 23A of the Federal Reserve Act is complied with.

The prohibition of section 24 of the National Bank Act against the ownership by banks of stock is not absolute; rather the pertinent provision reads: "Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation." The phrase "except, * * * as otherwise permitted by law" clearly encompasses section 23A of the Federal Reserve Act and that section specifies not less than six kinds of subsidiaries, "affiliates," which a bank may have and invest in without regard to the limitations of section 23A, and recognizes that those six do not exhaust the field of permissible subsidiaries by providing that as to all other subsidiaries, "affiliates," the limitations of section 23A shall be complied with. Thus Congress wisely recognized in this area, just as it did when it made sure by the use of semicolons that the "business of banking" would not be forever circumscribed, that human sagacity could not foresee all the kinds of subsidiaries, "affiliates," which "the discovery and perfection of better methods of business and ever varying attitudes of human relations" would make necessary in carrying on the "business of banking"—and proceeded to make broad room for them.

⁸ 132 Tenn. 367.

The foregoing does not mean that banks have liberty to do everything which may be profitable, nor everything which may be of some service in some attenuated way to some of its customers. Courts have long recognized that there is a difference between an act being "incidental" to an express power given and an act which is merely "beneficial," or "helpful," or "profitable" to the corporation. Prudence would dictate that what is fundamentally incidental to the banking business, and what is fundamentally the banking business, should not be lost in a controversy about peripheral services that a bank may desire to have available to its customers, if those peripheral things are more controversial than fundamental. It is an old and true saying that hard cases make bad law.

LEGAL OPINION PREPARED BY THE LEGISLATIVE REFERENCE SERVICE OF THE LIBRARY OF CONGRESS CONCERNING THE ASSERTIONS IN THE PRECEDING ARTICLE BY RALPH F. HUCK

In an article entitled, "What Is the Banking Business," appearing in the January 1966 issue of the *Business Lawyer*, the author, Ralph F. Huck, Esq., advocates reliance upon a liberal standard of construction when attempting to assess the statutory powers of banks. As a reply thereto the following is intended solely as a rebuttal of the case made out by the author for amplifying the powers of national banks.

Under the author's approach the maximum quantum of power available for exercise by national banks would be that capable of being reasonably deduced from their statutory authorization to employ "all such incidental powers as shall be necessary to carry on the business of banking" (12 U.S.C. 21, 24 (seventh)). What the author fails to appreciate is that section 21 is not a source of power. It is merely a labeling provision whereby the reader is alerted to the fact that the procedure for chartering corporations to be formed under section 21 and the sections which immediately follow it are corporations created to engage in "the business of banking" as national banks as distinguished from corporations established to manufacture widgets, baby dolls, or horseshoes.

Moreover, the phrase, "the business of banking," as contained in section 21 and elsewhere repeated, cannot be converted into a source of authority by recourse to textbook definitions of "banking." For one who champions a modern approach to the determination of what constitutes legally permissible banking, it is somewhat surprising to note his election to rely on a definition of banking contained in a source published in 1900. Be that as it may, however, abbreviated definitions of banking, whether current or ancient, are of little value in ascertaining the range of activities in which banks legitimately may engage. Under the definition presented by the author the primary function of banking is described as encompassing the extension of credit. Granted its accuracy, such definition is worthless for purposes of determining the means and the terms upon which banks lawfully may extend credit. From such a definition one learns nothing about the eligibility of applicants for credit, the duration for which credit may be extended, the maximum amount of credit available to applicants, or the rates of interest chargeable. For the answers to all such questions one must look to the legislative branch and the relevant statutes which it enacts. Virtually the same problems would await one who, after having sought a definition of a motor vehicle and having been told that it was a transportation device propelled by an internal combustion engine, wanted to ascertain information as to permissible speed limits, parking regulations, and licensing fees.

As further sustenance for his contention that the measure of power available to national banks is that deducible primarily from the phrase, "all such incidental powers as shall be necessary to carry on the business of banking," the author relies upon (1) punctuation and (2) historical background. Inasmuch as each one of the several phrases contained in the enumeration of powers conferred upon national banks in paragraph seventh is terminated by a semicolon, such punctuation, he maintains, established beyond a doubt that each phrase is possessed of "coordinate value." Consequently, the abstract phrase, "all such incidental powers as shall be necessary to carry on the business of banking," merits a construction by which it is entitled to the same weight as is accorded to all the other explicit phrases contained in said paragraph which purport to confer specific powers upon national banks. To the extent that proponents of a

strict construction of the powers available to national banks subordinate the aforementioned abstract phrase to the remaining express phrases, they are guilty of ignoring "both the grammatical and substantive construction and the historic interpretations of the words in question" as well as "the settled rule of statutory construction."

However much of the following consequence may be to the author's liking, the unavoidable effect of according to the hitherto quoted abstract phrase a status coordinate to that extended to the explicit phrases will be the speedy acquisition by the former of a position of primacy over the latter. By the very fact of its being stated in the abstract, the phrase, "all such incidental powers," and so forth, readily would prove serviceable as the source from which all powers sought to be exercised by national banks would be implied and the explicit phrases would be reduced to surplusage. Manifestly, no difficulty would be encountered in spelling out from the abstract phrase not only the powers enumerated in the explicit phrases but also in deducing from the former a sanction for virtually any business activity which national banks thereafter might deem profitable to undertake.

The author to the contrary notwithstanding, this tail-wagging-dog approach whereby an abstract phrase is accorded a primacy over, or even an equality with, explicit phrases in a statutory enumeration has never acquired acceptance as a workable standard of interpretation. Had the author avoided the error of relying on precedents which predate adoption of the national banking laws, such as *Curtis v. Leavitt*, 15 N.Y. 2. (1857), and had surveyed current source materials on statutory construction, he might have uncovered the following statements.

"General and special provisions * * * in the same statute should also be harmonized, if possible, but in the event they are in irreconcilable conflict, the specific provision will control, unless the statute, considered in its entirety, indicates a contrary intention upon the part of the legislature * * *. While general and special provisions are both sources of legislative intent, and both are entitled to consideration in the construction of statutes by virtue of the rule requiring construction as a whole, the reason for granting the latter the power to control the former is obvious * * *. It is in accord with our use of the English language * * *. In the event of repugnancy, a special statute should prevail, in the absence of contrary legislative intent, since the specific statute more clearly evidences the legislative intent than the general statute does." (Earl T. Crawford "The Construction of Statutes" (1940) secs. 167, 230; pp. 205-206, 430)).

"Where general words follow specific words in an enumeration describing the legal subject, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words * * *. If the general words are given their full and natural meaning, that is, the meaning they would receive in the abstract, they would include the objects designated by the specific words, making the latter superfluous * * *. Had the legislature intended the general words to be used in their unrestricted sense, it would have made no mention of the particular words, but would have used 'only one compendious' expression" (J. G. Sutherland. "Statutes and Statutory Construction" (1943) II, pp. 395, 398, 399, 401-402).

That the Supreme Court was disposed to be guided by such principles of statutory construction as late as 1924 is conceded by the author (*First National Bank v. Missouri*, 263 U.S. 640). Had he extended his efforts he would have discovered that the court does not appear to have abandoned the views to which it subscribed in 1924 (*Texas Pacific Ry. v. Pottorff*, 291 U.S. 245, 253-255 (1934); *Yonkers v. Downey*, 309 U.S. 590, 596-597 (1940)).

By recourse to a unique method of historical interpretation the author, whether intentionally or not, reinforces the primacy which in fact would accrue to the abstract, or incidental, powers clause in paragraph 7 under his untenable standard of statutory interpretation. Maintaining that the National Banking Act was modeled after New York banking laws, he traces the development of the latter with a view to demonstrating that the detailed enumeration of banking powers included in the first general bank incorporation law adopted in New York in 1838 was intended to serve the following ulterior purpose; namely, to make it doubly clear to nonbanking corporations that they were forbidden by other general legislation from exercising such banking powers. Proceeding by analogy he concludes by contending that the incorporation in paragraph 7 of expressly enumerated powers, as distinguished from the abstract grant of

incidental powers, was aimed at fostering a like objective; to wit, "to recite * * *. Those things from which others [nonbanking corporations] have been excluded without intending thereby to limit what the term 'business of banking' means." By this quoted statement the author appears to have let the cat out of the bag. Having already acquired all the powers needed by virtue of having been established to conduct the "business of banking," national banks were not dependent upon an express enumeration of powers set forth in paragraph 7. The immediate beneficiaries of said enumeration were nonbanking corporations. Such an approach comes perilously close to embracing the discredited inherent powers doctrine of interpretation.

Finally, by way of disclosing what may be accomplished by application of his liberal appraisal of the powers vested in national banks the author suggests that such banks are competent to engage in (1) equipment leasing, (2) the subletting of computer equipment; and (3) in the establishment and operation of subsidiary mercantile corporations. Since bank service corporations which Congress empowered smaller national banks to create for purposes of financing acquisition of data processing equipment were not expected to rent their equipment for nonbanking purposes, it is difficult to perceive how national banks, as principals, are at liberty to embark upon activities from which their agent, the subsidiary corporation, is precluded from entering (12 U.S.C. 1861-1865; S. Rept. No. 2105; 87th Cong., 2d sess., p. 4 (1962)). As to equipment leasing, no warrant of authority to engage therein is available to national banks. Likewise the author misconstrues 12 U.S.C. 371c as a source of power for the creation of subsidiary corporations. Section 371c confers no power but, on the contrary, imposes limitations on a bank's lending money to affiliates. For the establishment of an affiliate a bank must look elsewhere for statutory authority. The fact that Congress was persuaded to enact legislation expressly authorizing banks to establish bank service corporations suggests that, absent such enactment, Congress did not believe that banks were vested with requisite authority to charter such subsidiaries. Standing alone, the bank service corporation law (12 U.S.C. 1861-1865) would seem to provide evidence refuting the construction accorded by the author to 12 U.S.C. 371c.

THE COMPTROLLER OF THE CURRENCY,
THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, D.C., March 8, 1966.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance, Banking and Currency Committee, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: You have requested the views of this Office on H.R. 117 which is designated "A bill to prohibit banks from engaging in the business of personal property leasing." This Office strongly opposes the passage of the legislation.

This Office fundamentally disagrees with the purpose of this legislation which is to unduly restrict, for the private benefit of a competing group, the business operations of banks. We see no reason why a bank should not be permitted to engage in all forms of financing and perform all phases of the business of banking for its customers which its management believes can be performed profitably.

The objective of this bill appears contrary to the intent of Congress expressed in the National Bank Act, that national banks shall have "all such incidental powers as shall be necessary to carry on the business of banking" (12 U.S.C. 24, par. 7). Congress in 1864 wisely did not attempt to define the business of banking as it then existed. They foresaw that the business of banking would change and develop with the passing years. The sweeping character of these changes is evidenced by the variety of nonbank financial institutions, including leasing companies, which exist today in response to public financial needs which banks, in part, failed to satisfy. H.R. 117 would constrict for the benefit of these leasing companies the powers of banks which, as financial-service institutions, are best situated to respond to the public demand for what is essentially a financing transaction.

Banks have, from the beginning of commercial banking, financed the acquisition and the use of personal property. They have lent money on the security of some form of ownership or control of the property financed. They have also

lent money to lessors on the security of the lessee's agreement to pay rent. The power of banks to engage in lease financing transactions is entirely a financing power. While the banks may become the owner of commodities, they may not carry out the functions of the merchant.

They may not purchase commodities for stock, and hold them for eventual anticipated lease or sale. They may purchase only at the request of a customer who wishes to have the full and immediate use of the commodity on a lease basis. Banks become the owner of commodities in permitted lease financing transactions principally for the purpose of providing a well-defined financial, and not a merchandising service. They do not offer or solicit the sale of commodities—but only of financing. When banks enter into direct lease financing arrangements, they compete not with leasing companies, but with other sources of financing. The distributive and property management functions, as contrasted with financing, are really performed by the lessee himself where the transaction is handled directly by a bank.

This Office understands the opposition of those engaged in direct leasing who contend that they may be hurt competitively where such activities are conducted by banks, but this Office sees no legal or policy basis for eliminating or preventing such competition. The argument of some leasing companies that banks are violating their exclusive domain of direct leasing of personal property is entirely without merit. Such lessors, in most instances, are thinly capitalized corporations which discount their leases with a bank, act solely as holders of title and are nominal debtors. As such, they are relatively expensive retailers of bank credit. Throughout the private enterprise economy of this Nation, under the influence of competitive forces, there continues a constant search for improved means both of production and distribution. It is not "unfair" for any entrepreneur to devise less costly and more effective methods of serving consumers, which is indeed, the basic aim that we seek to achieve under our free enterprise system. If banks are able to provide a less costly means of financing the distribution of commodities and services, such result inures only to the advantage of the consuming public. It is the consumer, and not any class of producers or distributors who ought to be safeguarded.

It is the position of this Office that it would be an anomaly for Congress to reserve to the benefit of a select group a particular segment of financial business, while it prohibits that same business to the banks, which were clearly created by the Federal and State Governments for the purpose of meeting and satisfying public financial needs.

Banking, like any industry, is entitled to the benefits of new business forms and developments in financial transactions and, in the opinion of this Office, it would be myopic and contrary to the public interest to attempt to constrict the banking industry as would this bill.

Sincerely,

JAMES J. SAXON, *Comptroller of the Currency.*

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, September 21, 1966.

HON. WRIGHT PATMAN,
*Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: You have requested the views of this Corporation on H.R. 10529, 89th Congress, a bill "To prohibit banks from performing professional accounting services."

The bill would prohibit all banks whose deposits are insured by the Federal Deposit Insurance Corporation and all insured members of the Federal Savings and Loan Insurance Corporation from performing professional accounting services for their depositors, borrowers, or other customers, except as a necessary incident to the proper discharge of lawful functions of the banks or associations as trustees or agents. Professional accounting services would include "(1) the design, installation, and supervision of internal systems of recordkeeping in terms of money or internal controls of financial data; (2) the use of discretion in recording business transactions of a financial nature; (3) the preparation of financial statements from books of account; (4) the preparation of income tax returns, whether Federal, State, or local; or (5) the conduct of audits and the preparation of reports based on audits."

The Corporation believes that the present bill is a considerable improvement over H.R. 9548, which was introduced in the 88th Congress. Evidently, the intent of the present bill is to prohibit the performance of specific professional accounting services by banks and apparently does not embrace such other services as clerical, statistical, and bookkeeping functions. The prohibition, as in the earlier bill, of the performance by banks of these latter services, which lend themselves so well to computer handling, would be a disservice to banks, to their customers, and to the communities served by banks. In this connection, we note that the above definitions numbered 1, 2, and 3 appear to be unusually broad and could be subject to interpretation differently from what appears to be the intent of the bill. We suggest, therefore, that these definitions be amended to make it clear that the prohibited activities relate to purely professional services by banks and do not extend to normal banking services performed by banks for their customers such as clerical, statistical, and bookkeeping services.

If the bill is amended so as to clearly limit its scope to purely professional services by banks, the Corporation would have no objection to its enactment by the Congress.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the submission of this letter for the consideration of the Congress.

Sincerely yours,

K. A. RANDALL, *Chairman.*

Mr. MULTER. The Independent Bankers Association has indicated that they will submit a statement for the record. When it is received, it will be made a part of the record.

(The statement referred to follows:)

INDEPENDENT BANKERS ASSOCIATION OF AMERICA,
Washington, D.C., March 21, 1966.

Re H.R. 112; H.R. 10529.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance,
Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to respond to your invitation to state our views in the matter of legislation to prohibit banks from performing certain non-banking services.

It is our view that since approval on October 23, 1962, of Public Law 87-856, an inequity has existed as to the relative position of a single bank which owns data processing equipment and the jointly owned data-processing corporation, in which two or more banks are stockholders. Section 4 of that act forbids the jointly owned corporation to "engage in any activity other than the performance of bank services for banks" (H.R. 8874).

Public Law 87-856 was designed to help smaller banks do jointly what they cannot afford to do individually by pooling their resources to acquire and operate automatic data processing equipment. In practice, it is smaller banks that have invested in the ownership of these "cooperative" data processing corporations. They are at a disadvantage in that they cannot sell part of their computer time to others and thus help to defray some of the high costs of ownership and operation of data processing equipment.

Lawyers may disagree as whether banks which are the owners of "cooperative" bank service cooperation may sell computer services to persons other than banks, but the intent of Congress appears clear:

First. The House Banking and Currency Committee recommended and the House approved a section 4 which provided: "No bank service corporation may engage in any revenue-producing activity other than the performance of bank services for banks and, to an extent not exceeding one-half of its total activity, the performance of similar services for persons as organizations other than banks."

Second. The Senate amended section 4 to limit the activities of bank service corporations to the performance of services for banks. It is important to note that the Senate amended section 4 even though the Senate Banking and Cur-

rency Committee reported (Sept. 29, 1962, Congressional Record—Senate): "The suggestion that bank service corporations should not be permitted to perform any work for persons or organizations other than banks was also carefully considered by the committee * * *. The committee did not adopt the suggested amendment * * *." (Oct. 3, 1962, Congressional Record—Senate.)

Third. The House concurred in the Senate amendment (Oct. 5, 1962, Congressional Record—House).

With further reference to the ability of a single bank which owns data-processing equipment to sell its computer services to others we quote Mr. Reuss (Aug. 14, 1962, Congressional Record—House) responding to a question by Mr. Roosevelt during consideration of H.R. 8874:

"Further on the point raised by the gentleman from California I would call his attention to the fact that a big bank which has its own data-processing equipment is now able, without limitation, to go into the business of furnishing these services.

"Mr. ROOSEVELT. The gentleman from Wisconsin is telling me a bank like the Bank of America can, through a subsidiary corporation, provide these services for itself. Then get into competition with other businesses?"

"Mr. REUSS. Not through subsidiary corporations. There is a limitation."

In consideration of the aforesaid differences and limitations there is really no information as to the extent to which smaller banks have been deterred in the formation of "cooperative" data-processing corporations. It is generally conceded that the ability to sell some of the computer time is a significant help in paying the high costs.

We are certain that your committee records are replete with data evidencing the extent to which single banks, especially those owning data-processing equipment, have been advertising and selling their computer services.

Senator Robertson, reporting action by the Senate Banking and Currency Committee (Congressional Record, Senate, Sept. 29, 1962), stated:

"Finally, the committee in its report announced its intention to call for reports from the Federal bank supervisory agencies about the activities of these bank service corporations and early next year to review their activities in order to see whether abuses have developed and whether any amendments to the law are necessary or desirable."

The zeal with which single banks are offering computer services would indicate they are pressing their competitive advantage, and that their activities are a proper area of inquiry along with the activities of bank service corporations. If there was no adequate justification to permit bank service corporations to engage in the business of data processing (even within the limitations of 50 percent of its total activities) then there cannot be adequate justification to permit a single bank which owns data-processing equipment to do so, or viewed another way, the smaller banks are in the competitive ring, hobbled and with their hands tied. We feel that action to correct this inequity is long overdue.

Re H.R. 117.

We are further pleased to respond to your invitation to state our views on the matter of legislation to prohibit banks from engaging in the business of personal property leasing.

The use of a leasing arrangement as a form of security for legitimate extensions of credit is a useful security device. As such they should be subject to statutory lending limits applicable to the lending bank.

We see no need for legislative restrictions or limitations which may exceed the above briefly stated objectives.

Respectfully yours,

RALPH L. ZAUN, *President.*

Mr. MULTER. Our first witness this morning is Mr. Martin J. Kaufman, who is a constituent of our very distinguished colleague, Mr. St Germain, of Rhode Island.

Mr. St Germain, will you present the witness, please?

Mr. St GERMAIN. Thank you, Mr. Chairman.

That is very true. Mr. Kaufman is a constituent from Pawtucket, R.I., where he is engaged in accounting with a firm that bears his

name, that is highly respected throughout the community of Rhode Island.

We are proud of the fact that the National Society of Public Accountants has called upon him to present a statement on their behalf today on an issue that is so important to the national society. It is a privilege, Mr. Chairman, to present Mr. Kaufman to the subcommittee this morning, and to say that we are very proud to have him with us, and eagerly anticipate his testimony and the help that he can give us on this very complex matter.

Mr. MULTER. Mr. Kaufman, will you come forward, sir?

We are very pleased to have that fine introduction on your behalf by our distinguished colleague.

Please introduce yourself for the record again, together with the gentleman who is accompanying you.

STATEMENT OF MARTIN J. KAUFMAN, PUBLIC ACCOUNTANT, ON BEHALF OF THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS; ACCOMPANIED BY STANLEY H. STEARMAN, LEGAL COUNSEL, NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

Mr. KAUFMAN. Thank you, Mr. Chairman.

First, I want to thank Mr. St Germain.

I am Martin J. Kaufman, of Pawtucket, R.I., senior partner in my own accounting firm in Pawtucket. I am a graduate of the University of Rhode Island, where I received a bachelor of science degree in business administration, and I have done graduate work at Boston University.

I am authorized to practice before the Treasury Department.

I am appearing today as a representative of the National Society of Public Accountants. I have served the national society for a grant number of years, including a 4-year term on the board of governors, representing the first district, which is made up of the six New England States. At the present time I am second vice president of the national society.

I testified a few years back as chairman of the committee on bank relations on hearings which eventually led to the passing of the bill which became known as the Bank Service Corporation Act, and I may say that I am accompanied here today by Mr. Stanley Stearman, legal counsel for the National Society of Public Accountants.

I would like to ask that our full statement be admitted as part of the record, and I will just highlight some of the salient points in the testimony and be available to answer any questions.

Mr. MULTER. Your statement will be made a part of the record in full, together with the items that are appended thereto.

(The complete statement of Mr. Kaufman follows:)

TESTIMONY OF THE NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS ON LEGISLATION TO PROHIBIT BANKS FROM PERFORMING PROFESSIONAL ACCOUNTING AND TAX SERVICES

My name is Martin J. Kaufman. I am a practicing public accountant, licensed under the laws of the State of Rhode Island, and senior partner in my own public accounting firm in Pawtucket. I am a graduate of the University of Rhode Island, where I received a B.S. degree in business administration, and I have done graduate work at Boston University.

I am appearing before you today as the representative of the National Society of Public Accountants. I have served the national society for many years, including a 4-year term as governor of district I, which includes the six New England States. At the present time I occupy the position of second vice president.

I also served as the first chairman of our committee on bank relations and testified a few years ago at hearings on what has since become the Bank Service Corporation Act.

I am accompanied here today by Stanley H. Stearman, legal counsel for the national society.

The National Society of Public Accountants is a nonprofit, individual membership organization, which was formed in 1945. Our more than 11,000 members are engaged in the practice of accountancy in all States, the District of Columbia, and several territories. According to our constitution and bylaws, the national society is dedicated to elevating and maintaining among its members high standards of professional competence and integrity. We are constantly at work promoting good will and understanding between the general public and the public accounting profession throughout the United States.

In February 1964, the chairman of our bank relations committee, Guy S. Balser, of California, and I testified before this subcommittee on H.R. 9548. In general that legislation was designed to prohibit banks from performing "clerical, administrative, bookkeeping, statistical, accounting or other similar services * * *."

Our testimony at that time strongly supported H.R. 9548 because in the view of our members, banks encroaching into the accounting and tax fields constituted a form of direct and unfair competition which would be detrimental to members of the public accounting profession and the business community. At that time we cited many reasons why banks should be restrained from performing this type of nonbanking service.

We are grateful that the chairman of this subcommittee has again seen the need for and sponsored legislation—this time as H.R. 10529, a bill to prohibit banks from rendering professional accounting and tax services.

The language of H.R. 10529 is not as broad in scope as H.R. 9548, and for this reason we believe the pending bill is more specifically directed to a solution of the problems faced today by the accounting profession and the small businessman. Dealing as it does with "professional accounting services," H.R. 10529 contains specific descriptions of the types of activities which constitute "professional accounting services" and which therefore should be denied to banking institutions.

The bill would not interfere with legitimate banking activities, nor would it deny to banks those opportunities which are the result of new developments in automatic and electronic processing equipment. Rather, H.R. 10529 is designed simply to prohibit banks from rendering services which traditionally have been and are currently being performed by trained independent professional accountants.

In our view, there are many significant and justifiable reasons why H.R. 10529 should be enacted. Yet none of these reasons would unduly restrict legitimate banking activities or interfere with the traditional role of banking as it has developed in the American economy.

We believe firstly that banks should not be permitted to render professional accounting and tax services, frankly because such services are illegal and outside of the scope of bank authority as contained in our national banking laws. Banks have a rather wide latitude to render those services which can properly be termed "incidental" to traditional banking functions. However, it is our opinion that the accounting and tax services being offered by more and more banks today are rather far removed from the "incidental" category. The same can be said, of course, for many other nonbanking services currently being rendered. We disagree with the position of the Comptroller of the Currency that the performance of accounting and tax services is within the "incidental" category.

There is another reason why bank accounting and tax services are illegal. These services are contrary to the intent of Congress as expressed in the Bank Service Corporation Act (Public Law 87-856). Section 4 of that act provides that "no bank service corporation may engage in any activity other than the performance of bank services for banks." It is inconceivable that Congress

should have recognized in that statute the need for bank service corporations to be confined in their activities to servicing banks, and banks only, and yet be unwilling to have the same restrictions imposed upon banks themselves.

During debate on the Bank Service Corporation Act, Senator William Proxmire, while proposing an amendment to confine bank service corporations to servicing themselves and other banks only, stated: "We are in a position to have a bill that provides what the banks really want, and what the members of the committee feel is justified, and at the same time safeguard legitimate business enterprises which otherwise might be put out of business." It's hard to take issue with Senator Proxmire's cogent observation.

Moreover, with reference to the prohibition directed at nonbanking activities on the part of bank service corporations, the Senate committee report on the Bank Service Corporation Act included the following highly relevant statement: "The bill is not intended as a means to enable banks to engage in nonbanking business, and the committee looks to the bank supervisory agencies to make sure that banks do not organize service corporations for the purpose of entering into businesses other than banking." If Congress were so concerned that banks would organize service corporations that would render nonbanking services to the public, then by the same token Congress should be equally as concerned that the banks themselves, as principals, do not enter into any activities other than banking.

And yet, even in this atmosphere of doubtful legality, more and more banks throughout the country have begun to advertise and promote accounting, recordkeeping, tax return preparation and related services—activities which normally fall to the practicing professional accountant.

Banks are competing in this area as a result of rather extensive investments in automatic and electronic data processing and recordkeeping equipment. The basic purpose behind the purchase or lease of this expensive equipment is to enable the bank to render more modern and efficient banking services to customers. But it doesn't stop there. Banks have invested in equipment with capabilities and capacities far beyond the needs of the bank. As a result, there is a great deal of slack or idle time when this expensive equipment is not being utilized to the maximum degree. Consequently, banks have been looking around for ways and means to keep these expensive investments productive. And unfortunately for the accountant and the small businessman, one of the ways is for the bank to offer accounting, recordkeeping, and related services to the public.

Based on numerous brochures, pamphlets, advertisements, booklets, and custom-made proposals which banks have distributed to the public, banks seem anxious to offer a wide range of services. These include, but by no means are limited to: payroll services, account reconciliation, cost accounting, billing, sales reports, inventory control, and the preparation and filing of various tax returns. These services have been labeled "business services" to distinguish them from traditional banking activities. But no matter what you call them, they are the very same services which have been and are being competently performed for the public by independent practicing accountants.

In order to properly understand and appreciate why bank encroachment into the public accounting field is not in the best interests of the business community, it is important to review briefly some important facts about the practicing accountant and the services he renders.

A professional practicing accountant is one who is skilled in the knowledge, science, and practice of accounting. His education, training, and experience all are geared to enable him to offer accounting analysis and advice to his client. The practicing accountant performs these services for individuals, businesses, government agencies, financial institutions, and private corporations of all types and sizes. In short he is available to a variety of clients and under varying circumstances.

Of most importance, the practicing accountant is independent. His independence denotes the absence of self-interest or bias in forming professional judgments. He brings objectivity, integrity, and a high degree of ethical conduct to the performance of his professional services.

He can investigate and analyze a business operation, determine areas which are deficient or improperly functioning and make constructive suggestions and recommendations for improvement. He has professional accounting skills; he has an objective approach; he has an analytical mind. He renders professional judgments.

This description is classical. It goes more or less "by the book." Here is another description of the independent practicing accountant from the accountant's standpoint. It was written by one of our members in Michigan. This accountant speaks from the heart. This is what he says:

"My office has been open to the public for 13 years. During that time we have experienced such a variety of problems of small businesses that we often reach the point where we feel that our knowledge and experience, as capable and educated as we may be, is insufficient or may be soon. We work diligently for long hours, and our income is limited because we cannot handle enough of these business accounts to earn more. We do not do anything else. We do not have time. Therefore, it seems to me that it would be impossible for anyone or any organization to take on this responsibility as a sideline or 'filler' job. Something would have to be left undone.

"Our profession, as a part of the free enterprise system, is competitive in that we must produce results to obtain and maintain our clientele. We pride ourselves in gratifying our clients' confidence in us, protecting their financial interests and keeping their relationships with the taxing authorities clean and wholesome. We offer an indispensable service to small business—not on a part-time basis—but as full-time practitioners. We put our hearts and souls into it. Our rewards are incomes for our families, and a proud place in our communities. Our clients are rewarded with our full-time vigilance over their activities and our timely advice to save them losses and help them earn and better provide for their families. We are responsible for saving them expenses that many times amount to much more than our fees."

Unfortunately, there is every indication that the so-called business services being offered by banks are handled by the technicians who operate automated processing equipment rather than professionally qualified accountants. In fact, a society member in California reported that he recently completed teaching an accounting course to a group of bank personnel through the American Institute of Banking. The original enrollment in his class was 30 students. There were 13 dropouts and 4 of the remaining 17 students, our member reported, did not receive a passing grade, even though there was ample text material provided and the final examination was reviewed 1 week prior to the examination date. "Are these the type of people you want to handle the accounting for your business?" he asked. "Would you want these people to develop the figures necessary for the preparation of your tax return?" he added. We would all have to agree, "No."

As a result of these conditions, the only real services that banks are offering in actual practice are pure recording functions, generally without any attempt to advise or counsel the client as to the meaning or significance of the figures presented to him by the machines. This could lead the individual businessman to believe that he is obtaining adequate professional-level accounting services, whereas he would really be missing the analysis, judgment, and advice which the independent professional accountant can offer.

In one instance reported to us by a member, a bank customer actually had to file a bankruptcy petition after her finances became seriously depleted due to the mishandling of her tax records by a California bank. In other words, there is a danger that the typical businessman may be lulled into feeling that his accounting is being well taken care of by the bank, when in reality such might not be the case at all.

Our members, as progressive, modern practicing accountants, are not unmindful of the computer revolution. In fact, within the past several years, increasing numbers of our members have turned to the use of automatic data processing equipment in their own accounting practices. They are doing this in order to be able to provide a better service to clients who are faced with an increasing need for more detailed and extensive accounting records. Through the use of machine accounting, our members are able to provide their clients with detailed information which could not otherwise be so readily available.

I can speak from experience because I am in the process of installing ADP equipment in my own accounting practice. I have discussed this with other accountants and many are considering adopting these modern techniques also, if at all possible. But, the important point to bear in mind in connection with this trend is that independent accountants are able to follow up the automated machine accounting with professional evaluation and analysis of the client's financial condition.

Our members, therefore, cannot and do not oppose computers. Such a position would be folly. But it is one thing for a businessman to rely entirely on computer services and information directly from the processor and quite another for the businessman to rely on an accountant's judgment.

Computer services have been offered for many years by the so-called service centers. Invariably, however, these service centers deal with and through accountants.

But accounting service rendered by banks which are based on automatic data processing can be objectionable. They often present results which superficially may be impressive, but which could be badly distorted because the bank processes entirely what the untrained small businessmen give them. The independent data processing center, however, handling data prepared by trained accountants, is quite another story.

The big problem, as we see it, is that with the various brochures, advertisements and publications distributed by banks, there is a distinct impression created that the bank is offering a complete accounting service. But in 90 percent of the cases, they are not. They are merely doing some clerical work, and directly with the businessman at that.

The most important point to keep in mind is that there is no interpretation and analysis of information developed by the bank for the businessman. The businessman probably feels, after reading the bank's advertisements and accepting the bank's offer, that he is getting all of the expert, professional accounting and recordkeeping service he needs. Such is not the case.

The National Society of Public Accountants and its members have constantly tried to impress upon the business public that while a good recordkeeping system is vital to business health, records in and of themselves are valueless unless they can be properly analyzed to determine where the company has been, where it is now, and where it is likely to be heading. Unless the average businessman can obtain a proper evaluation of the message contained in his records, his needs will hardly be served. All of the records in the world will do him no good unless he can rely with confidence on a professionally trained accountant to tell him what the records mean.

The importance of financial statement analysis and evaluation is pointed up by the fact that most firms of reasonable size have their own accounting departments and their own controllers. These key staff personnel are able to provide their employer organizations with professional counseling and advice. Smaller firms, on the other hand, which cannot afford or justify professional accounting staff personnel, turn to the independent practicing accountant for this indispensable service.

Large businesses can afford to spend thousands of dollars a year for controllers and financial advisers. They can have these people on the company payroll and keep them there for that purpose. But the small businessman cannot afford such an expense. He has to look outside of his own organization, because he needs accounting and financial advice as much, if not more, than the big business organization.

There is another possible condition which is likely to exist and which definitely is not in the best interests of the business community. That is, that the temptation will be quite strong for some banks to take a position, subtle as it might be, that the availability of loan funds will be predicated on, or at least influenced by, the bank's being able to provide accounting and recordkeeping services to the prospective borrower.

For example, if a bank is anxious to obtain new customers for its "business services," it is not inconceivable that undue pressure could be exerted on a prospective borrower in order to persuade the borrower to become a client for the bank's accounting, recordkeeping, or tax services. In essence, a bank could say to a prospective borrower: "Since we know what financial information we want, and how we want it presented, let us keep your accounting and bookkeeping records; otherwise, there may be a serious question as to our granting you a loan under any other arrangement." Or, depending on the competitive situation that exists among banks, a bank could, as some already have, advise borrowers that if the borrower utilizes the bank's "business services" he will be able to get his accounting and recordkeeping done without charge. In the final analysis, is anything really free today?

A national society member in California has suggested the possibility that bank decisions on loan applications might be influenced by the overall profit in

the customer's account, including bookkeeping and accounting services, rather than on long-established standards of evaluation. If this were the case, both the user and the nonuser of the bank's accounting and recordkeeping services could be hurt, as well as the bank's depositors. The user would suffer by having unwisely obtained funds and incurred an obligation that he cannot repay. Also, the nonuser would suffer by having been denied a loan which could have been beneficial under the circumstances, and which could have been repaid from the profits generated by his business. The depositors could suffer by having their funds placed with poor risks (even though potentially a profitable customer, because the bank did his accounting and recordkeeping work) and failing to have funds placed with good risks.

Small businessmen would no longer be able to maintain an independence in mental attitude when seeking professional accounting and tax services. They could be influenced by the thought that relations with the bank might suffer if they did not allow the bank to render these services. The customer might then become a "captive" client of the bank. Such a situation would obviously be detrimental in the long run, not only to the customer, but to the relations between the bank and the accounting profession, because such an arrangement would constitute unfair competition between the bank and professional accountants offering similar services.

Somewhat related to this situation is the problem that would occur if banks no longer rely on "independently" prepared financial data when evaluating a prospective borrower. Now, banks generally place considerable reliance on financial statements prepared by independent practicing accountants. But, if the banks themselves maintain a prospective borrower's financial records, will there continue to be a need for the bank to call for "independent" statements? If not, such procedure might act to the detriment of the bank itself, its many customers, and, by the same token, not be looked upon favorably by bank supervisory agencies.

Not only are we concerned over the present situation, but the possibility of escalation will be even more troublesome. As one of our Ohio members put it, once a bank gets its foot in the door of a business by providing a portion of the firm's accounting and recordkeeping needs, it does not take much imagination to visualize the bank's taking over other accounting services step by step and possibly eliminating accountants altogether. To us, the pending bill is like preventative medicine.

Accounting services must be performed by independent professionally trained accountants. No bank can adequately perform such services and remain unbiased and objective in other business relationships with customers.

Banks may disclaim any intent to encroach into the professional accounting field. Yet the facts are irrefutable. Banks are definitely moving into the area of the independent accountant. It is not only a question of unfair competition, but the invasion of a professional area by a financial, profitmaking organization and the elimination of independent professional accounting judgment.

An analogy can easily be drawn with the legal profession. The American Bar Association has long recognized that professional judgment must be separated from those that might have a financial stake in a transaction or who are untrained in legal matters. The accounting and legal professions are similar. Prohibitions that apply to banks offering legal services should apply to accounting services also. Otherwise if banks perform accounting services, why shouldn't they be able to perform legal services? And, free legal services at that, because, as we have seen, many banks now offer free accounting services.

An NSPA member from Chicago, discussing this very point, wrote that the accountant, like the attorney, is the confidant of his client. He is privy to many things involving the personal and business life of his client. What would be the relationship between the persons who are employed by the bank to function in the accounting and recordkeeping areas, and the businessman client where confidential matters are involved? It would appear that confidentiality could completely break down, our Chicago member observed.

In conclusion, we do not believe that accounting, recordkeeping, income tax services, and other "business services" fall within the province of banks under the traditional concept of banking as it has developed over the years in this country.

We do not believe that banks should be allowed to offer accounting, record-keeping, and tax services.

We do not believe that the best interests of individual customers, business firms, the public accounting profession, and probably even the banks themselves, will be protected if this trend continues.

We believe now is the time for Congress to act. We believe now is the time to place reasonable restrictions on expanding bank services which are not in the best interests of the public and the business community, and which definitely encroach into the field of the independent practicing accountants of our country.

Enactment of H.R. 10529 will accomplish this objective.

Attached to this presentation, and made a part of it, are copies of three letters, written by members of the National Society of Public Accountants from California, Illinois, and Missouri. Each of these letters graphically describes actual instances in which a businessman's reliance on a bank for accounting, record-keeping, and tax services had unfortunate results.

We believe these letters are eloquent testimony to the conditions that exist and the problem of which we speak. We commend them to your serious consideration.

On behalf of the National Society of Public Accountants, may I extend our appreciation for the opportunity of appearing before this subcommittee. We hope our comments and suggestions will assist you in your important deliberations.

* * *

KIRKWOOD, Mo., *January 17, 1966.*

HON. LEONOR K. SULLIVAN,
*House Office Building,
Washington, D.C.*

DEAR MRS. SULLIVAN: I understand you will soon be considering H.R. 10529 to keep banks out of professional accounting.

I would like to ask your support of this bill, for following reasons:

1. The banks put us in an unfair competitive position. They require a large amount of money be kept on deposit, as part of their service. The income on this allows them to charge a lower price for accounting services. This is concealed by them so that it looks as though they are charging very cheap prices for their services, when in reality they may be charging more.

2. I am convinced through experience, that the banks who offer payroll services, for example, are either ignorant of, or just don't care about the accuracy of the figures they submit, both as to use thereof by the client, and the employees working for the client.

Would like to relate an actual case. In trying to make entries on general books—for payrolls made by a bank—they showed an adjustment. Upon inquiring, I found this was a total for a number of different adjustments. In trying to determine which adjustments were being made, I was told, indiscreetly of course, that I would have to assume the figures they submitted were correct. I know, from my training and experience, that there is a weak point in their system which would, and I know did in at least one case, cause an error in employee's figure for that year.

Upon recommending to my client that he make a change, I was told that they would very likely have to pay back the loan from this bank if they did change, and so my hands were tied. I am not kicking because they took work away from me in this case, as I did not do the payroll recording before. On the other hand, however, who can say where the banks will stop. Besides, automation services can be handled by independent service bureaus, where they are needed.

3. The banks provide a very vital function, which to be done in the best manner, should require all their time and talents, in the same way that our special field of endeavor does.

4. Banks are, generally speaking, big business, whereas a lot of accountants are small firms and even individuals, who rely upon recordkeeping work for their livelihood. Auditing work, by its very nature, again is limited in large measure to big business firms in the public accounting field. Therefore, bookkeeping is the specialty of many small business people, who need all the help they can get.

Therefore, I again urge your support on H.R. 10529. Thank you.

Yours truly,

M. E. KERN.

JANUARY 19, 1966.

Congressman FRANK ANNUNZIO,
House Office Building,
Washington, D.C.

HONORABLE SIR: House bill H.R. 10529, which was introduced August 19, 1965, should be given serious consideration to avoid such incidents which I describe below:

A new client, who was in financial difficulty because of lack of business knowledge, such as costing his labor, etc., obtained a loan from our local bank by way of having another of my clients endorse his note. At the time the loan was made, the subject of a long-term loan to be obtained from the Small Business Administration came up and a certain official of the bank stated he would prepare the application for the client.

The writer had prepared a penciled balance sheet with the notation that it was tentative and based solely on the client's list of assets and liabilities, with no confirmation and not backed up by a profit and loss statement.

Upon examining his income tax returns for 3 prior years, the writer determined the fact that this client could not pay back a loan of the amount that would be necessary to place him on his feet. The writer advised the client not to apply for said SBA loan until he followed the costing and pricing method suggested for 6 months and see the results.

However, the bank official prepared the application. How he arrived at a balance sheet and operating statement is beyond my understanding as I had the records of this client for the current year and the 2 previous years. The application would be frivolous and would take the time of the SBA examiner, who after examining the facts, would consider the applicant irresponsible which would bar him from applying again.

The bank made application to the SBA for funds for another of my clients, and it has proved to be insufficient to do the expanding and provide operating capital necessary, causing the applicant real hardship. I had warned my client before not to be too hasty in applying and that I would analyze and project his future needs in preparing the application. However, when visiting the bank they talked him into letting them prepare the application. In other words, the oldtime prestige of a banker overshadowed my advice.

The main trouble is, in most cases, the banks are not fully acquainted with the client, his business, and his methods, and their main concern is to retain his account, get a new account, make a loan, etc. Taxwise, they are not equipped with the personnel of the caliber of a professional tax man. They do not feel the responsibility a professional accountant and tax man has to his clients because they are his sole source of income.

Accounting, preparation of balance sheets, operating statements, and tax matters are only a sideline to their banking business, and, therefore, the quality suffers. A good qualified man would not work for a bank's salary when he can do so much better practicing individually.

I, therefore, urge you to consider these facts and back this bill to remove a bad business condition.

Respectfully yours,

L. C. SCHUERMAN.

* * *

SAN DIEGO, CALIF., January 25, 1966.

COMMITTEE ON BANK RELATIONS,
NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS,
Washington, D.C.

GENTLEMEN: In response to your proposal, please be advised that the area of banks performing bookkeeping operations for their depositors seems to lead to extremely unethical situations, such as:

(1) I am able to find out income tax information, net or gross profit and expense or income information from personal conversations with an assistant bank manager about some local firms, which I am not associated with.

(2) In 1962, a new client came to me and stated that she desired that I keep her books, because she felt that they were not in order. She also stated that the Bank of America had been keeping the books because she had a loan with them and that she was told she could not get the loan if they could not keep the books, and that she would have to pay up the delinquent loans

with the other branches of Bank of America or they would foreclose. She had no other choice but to let them keep the books, and as a result, she obtained additional loans.

After investigation, I found that the sales taxes were overreported and the social security taxes were underreported, and subsequent audit by the California Department of Employment cost her several hundred dollars.

In February 1964, she filed chapter XI bankruptcy, in order to save some of her assets and keep the creditors restrained. Lack of working capital and overextension was the cause of this situation.

I have heard of more disastrous situations than this, but without foundation, I hesitate to mention them.

However, they all center around coercion by a bank or someone in the bank refusing loans unless they are allowed to keep the books.

Personally, I encourage competent competition. There seems to be an abundance for work, in this field, for those who have the desire to help others, but it seems doubtful that a person can wear two hats and do justice to both.

Very truly yours,

R. F. RIDENOUR.

Mr. KAUFMAN. I have additional material which I would like to submit for the record also as part of our material as I go along, if I may just indicate it, and if you would then accept it for inclusion in the record, I would appreciate it.

Mr. MULTER. As you get to each item, if you will hand it to us, we will make it a part of the record.

Mr. KAUFMAN. Thank you, sir; that is fine.

To give you a little background on the national society, it might be repetitive, because of the fact that we have appeared before, but the national society is a nonprofit, individual membership organization, and was formed in 1945. We have more than 11,000 members spread throughout the entire United States, the District of Columbia, and the several territories.

According to our constitution and bylaws, the national society is dedicated to elevating and maintaining among its members a high standard of professional competence and integrity. We are constantly working to promote good will and understanding between the general public and the public accounting profession throughout the United States.

In 1964, the then chairman of our bank relations committee, Guy Balser of California, and I testified before this subcommittee on H.R. 9548. In general that legislation was designed to prohibit banks from performing clerical, administrative, bookkeeping, statistical, accounting, or other services.

We strongly supported H.R. 9548 because in our view at that time, and in the view of our members, it was felt that the banks were continuing to encroach into the accounting and tax fields and it was becoming a form of direct and unfair competition which could be completely detrimental to the public accounting profession and to the business community itself.

At that time we cited many reasons why banks should be restrained from performing this type of nonbanking service.

We are very grateful for the fact that the chairman of this subcommittee has again seen the need for and sponsored legislation, this time known as H.R. 10529, a bill to prohibit banks from rendering professional accounting and tax services.

We feel that this bill is an excellent bill, a complete bill, because the language is more specific, it is not as broad in scope as H.R. 9548 was,

and as a result of this we feel this bill will more tend to be a solution to the problems that the accounting profession and the small businessman are facing today. Dealing as it does with professional accounting services, H.R. 10529 contains specific descriptions of those activities which constitute professional accounting services and which therefore should be denied to banking institutions.

This bill does not interfere with legitimate banking activities, and we do not feel that it will deny the banks the opportunity of using the new developments in automatic data processing equipment. We feel that H.R. 10529 is designed simply to prohibit banks from rendering the types of services which have traditionally been and are currently being performed by trained independent professional accountants.

We feel there are a great number of reasons why this bill should be enacted. Yet there is nothing in there that will unduly restrict legitimate banking activities; and there is nothing in the bill that will cause any interference with the traditional role of banking as it has been developed as part of the American economy.

There are many reasons why we feel that banks should not render what we would consider as professional accounting and tax services. Frankly, we think these services are illegal and outside of the scope of bank authority as contained in the national banking laws.

It seems that banks have a rather wide latitude to render these services which can be properly termed incidental to traditional banking functions. However, we feel that more and more of the banks are offering accounting and tax services which are quite far removed from the so-called incidental category. And the same can be said, of course, of many other nonbanking services currently being rendered. We are not in agreement with the Comptroller of the Currency when the Comptroller makes the statement that he feels that the performance of accounting and tax services are within the incidental functions of a bank.

We feel there are more reasons for this type of service being illegal. We feel that when Congress passed the Bank Service Corporation Act, which is known as Public Law 87-856, section 4 of that act provides that no bank service corporation may engage in any activity other than the performance of bank services for banks. And it does seem that Congress would not have approved a statute for bank service corporations confining their activities to servicing banks, and banks only, and not be willing to place the same restrictions on the banks themselves.

An important point, I think, is that in the process of the debate on this particular act, Senator Proxmire made a statement when he proposed an amendment to the Bank Service Corporation Act, which clarified the act even further, and his statement is:

We are in a position to have a bill that provides what the banks really want, and what the members of the committee feel is justified, and at the same time safeguard legitimate business enterprises which otherwise might be put out of business.

It is pretty hard to take issue with Senator Proxmire's cogent statement and his observations on this matter.

I might say, further, that the Bank Service Corporation Act was not intended as a means to enable banks themselves to engage in nonbanking business, and I think that, if I remember the discussion at

the time of the adoption of that act, the Senate committee report indicated that the committee looks to bank supervisory agencies to make sure that banks do not organize service corporations for the purpose of entering into businesses other than banking. And if Congress was so concerned that banks would organize service corporations that would render nonbanking services to the public, then by the same token Congress should be equally as concerned that the banks themselves, as principals, do not enter into any activities other than banking.

Mr. MULTER. May I interrupt at that point?

Mr. KAUFMAN. Yes, sir.

Mr. MULTER. I don't think that Congress, I mean now both Houses of Congress, and the bill was enacted with the approval of the President, could have been more precise in what they meant and what was to be done when they wrote into the law in so many words, section 4, which reads:

No bank service corporation may engage in any activity other than the performance of bank services for banks.

Although the Comptroller of the Currency opposed the bill as it was presented, opposed that provision being written into the bill, nevertheless he now sets himself up as a superlegislature, overriding both the President and the Congress, and says he is going to permit the banks to do this, and will let these bank service corporations do this.

I don't know how we could have said more clearly than it was said in the reports, and said in the act itself. We wanted no misinterpretation by any supervisory authority of what we were permitting to be done. Yet we are now confronted with a Comptroller who says we didn't mean that at all, and whether we meant it or not, he is going to allow something different.

Mr. KAUFMAN. That is why, if I may say so, Congressman, this act becomes even more important, because of the fact that if regulatory agencies are going to set themselves up as the final authorities, every act of Congress is going to be interpreted or misinterpreted by other regulatory agencies, and this becomes a very poor situation.

Mr. MULTER. We, in Congress, can understand how a regulatory or supervisory authority may misinterpret some language that is subject to more than one interpretation, and when that happens, why, of course, the Congress, if it differs with that interpretation that has been placed upon it by the agency or supervisory authority, it must enact new legislation. However, when we make our intent very clear, in unmistakable words and language, he just has no right to do these things. I hope that by the enactment of these bills that we have before us, we will make it crystal clear again that the banks may not do the things prohibited and proscribed by law, even though a supervisory agent may say, "Go ahead and do it."

Maybe we have got to write into this some provision that will permit anyone of interest, any citizen, to bring this matter to court and get an injunction against, not only the Comptroller, but against any bank or banking institution, and anyone else who so clearly violates the plain intent of the law.

Mr. ST GERMAIN. Mr. Chairman.

Mr. MULTER. Yes.

Mr. ST GERMAIN. The chairman stated the Comptroller opposed the legislation, especially section 4, which the chairman cited, at the time

this act was being considered, the Bank Service Corporation Act. I am wondering if, when he opposed this act, whether or not he testified against that section of the act, section 4. If so, I think it is our duty to write him and ask him how he can justify his present attitude, in view of the fact that he interpreted that section himself when he opposed it in 1964.

Does the chairman follow my reasoning?

Mr. MULTER. Yes; I do. I think we will have to have Mr. Saxon come up here and tell us, in his own words, how he can justify it.

In the report he sent up here, which I have made a part of the record, he says—

We regard it as highly unfortunate that a provision was added to H.R. 8874 at the last minute, prohibiting bank service corporations from performing any services for anyone other than banks.

This was not a last minute thing at all. All through the hearings we made it very clear that we were trying to keep the banks in banking, and keep them from performing nonbanking services. He and others did oppose our doing it. We made it very explicit that we didn't want that done.

Mr. ST GERMAIN. The point is, it is immaterial whether it is highly unfortunate or not. The fact is that it is the law.

Mr. MULTER. I agree completely. I think he has no right, unfortunately or otherwise, to disregard the very express language of the statute.

Mr. ST GERMAIN. Is the Comptroller going to testify himself, or is he going to—

Mr. MULTER. He sent up this letter or report and indicated to me that he was unavailable today, but I think, under the circumstances, we must have him before this committee to ask questions with reference to this, and we will set a date probably for next week at which time we will give him an opportunity to come up and testify as to his position, and see if he can justify it.

Do you intend to submit to us, as part of your additional data, the rulings with reference to this subject matter by the—

Mr. KAUFMAN. No; we didn't, and we think they should be on the record.

Mr. MULTER. I think then possibly we ought to make a part of the record at this time; I referred earlier to the hearings that we conducted on February 25, and 26, 1964, and I should also refer to the hearings on H.R. 107, which this subcommittee conducted on April 12, 14, 28, 29, and 30, 1965. On pages 394 to 398 there are rulings which are applicable to the subject matter of the two bills before us, and we will reproduce them as part of this record.

(The information referred to follows:)

[Excerpt from hearings on H.R. 107 and H.R. 6885, "Consolidation of Bank Examining and Supervisory Functions," Committee on Banking and Currency, 89th Cong., 1st sess., pp. 394-398]

17. Use of data-processing equipment

It is stated in paragraph 3500 of the "Comptroller's Manual" that a national bank may make available, for the use of others, data-processing equipment acquired for the primary purpose of performing service incidental to banking. This ruling is challenged on the grounds that it is not provided for by law, and that it is contrary to the intent of Congress expressed in the Bank Service Corpo-

ration Act (12 U.S.C. 1861-1865) prohibiting any data-processing activity other than the performance of bank services for banks.

The objections are groundless in light of the provisions contained in 12 U.S.C. 24 and 12 U.S.C. 1861-1865. A national bank may clearly own and operate data-processing equipment under 12 U.S.C. 24 which authorizes it to exercise all such incidental powers as shall be necessary to carry on the business of banking. It is fundamental that if a bank is to achieve the full utilization of its investment in such equipment, it must make it available for the use of others even though it is acquired for the primary purpose of performing services incidental to banking. This conclusion is entirely consistent with and supported by the judicially recognized right of a national bank, to lease or construct a building for banking purposes even though, in order to achieve a maximum return on its investment, it intends to occupy only a part thereof and to rent out a large part of the building to others. The Bank Service Corporation Act (12 U.S.C. 1861-1865) recognizes the right of small- and medium-sized banks to organize and invest in bank service corporations to provide service comparable to that offered by the largest banks. However, nothing contained in either the act or its legislative history precludes a bank from owning its own data-processing equipment or from sharing in the ownership of such equipment through a corporation owned by it with individuals or with corporations other than banks.

17. Ruling (par. 3500) that a national bank may make available for the use of others data processing equipment acquired for the primary purpose of performing services incidental to banking

Read literally this regulation would seem to apply solely to a national bank enjoying exclusive possession within its own premises of data processing equipment. Since this equipment for all practical purposes is not movable, conceivably the only way in which a bank owning or possessing the same may make it available "to others" is through the use thereof on its own premises. Whether such use, by reason of the limitations of this equipment, would preclude its lease to other than banking institutions cannot be readily ascertained. In any event such use as is anticipated by the regulation is not expressly traversed by the provisions of the Bank Service Corporation Law (12 U.S.C. 1861-1865); for the latter pertains exclusively to bank services of which a national bank is a recipient rather than a distributor. This conclusion is borne out by the committee reports issued in conjunction with H.R. 8874 (87th Cong.) which was finally enacted as the bank services corporation law. Therein it was stated that this measure was designed to enable smaller banks, unable to afford such equipment through direct purchase or lease, to pool their resources via establishment of a jointly owned bank service corporation and acquire such equipment in the name of such corporation for use by all participating banks. No consideration was given to the prospect that larger banks, possessed of resources adequate to enable them to purchase or lease such equipment, might endeavor to recoup the cost thereof by engaging in activities sanctioned by the regulation (H. Rept. No. 2062; 87th Cong., 2d sess., pp. 2-3 (1962); S. Rept. No. 2105; 87th Cong., 2d sess., pp. 1-2 (1962)).

With reference to the prohibition contained in 12 U.S.C. 1864, directed at nonbanking activities on the part of bank service corporations, the following excerpt from the Senate committee report is relevant. *"The bill is not intended as a means to enable banks to engage in nonbank business, and the committee looks to the bank supervisory agencies [12 U.S.C. 1865] to make sure that banks do not organize service corporations for the purpose of entering into businesses other than banking"* (op. cit., p. 4). [Emphasis supplied.]

For a national bank to engage directly in the nonbanking activities sanctioned by the regulation manifestly would be at variance with the intent of Congress as expressed in this quoted statement, but it seems reasonable to conclude that the committee was of the opinion that national banks already were prohibited by the term of 12 U.S.C. 24 (Seventh) from embarking upon undertakings not incidental to, or necessary for, the carrying on of the business of banking; and, accordingly that the restriction contained in 12 U.S.C. 1864 was essential only to prevent indirect evasion of section 24 through engagement in nonbanking activities on the part of bank service corporations, the agents of the principal. It is inconceivable that the Congress intended to exclude the agent, but not the principal, from engaging in these forbidden activities. As indicated, the failure to include the principal within the express prohibition is understandable only upon the assumption that the Congress was convinced that the principals already had been restricted under previously enacted laws.

The objective sought to be fostered by the regulation is obvious, to wit, partial recoupment of the huge cost of data processing equipment through leasing the use thereof. Conceivably this would entail entry upon a bank's premises at odd hours by a variety of lessees, including possibly retail stores, building and loan associations, and State-chartered banks not supervised by the Federal agencies enumerated in 12 U.S.C. 1865. That such activities are classifiable as part of the normal conduct of a banking business is extremely doubtful; and if recoupment of cost is to be accepted as affording an adequate justification of such practices, then logically any unconventional activity yielding a profitable return and contributing to a reduction in the cost of banking operations, such as the leasing of cigar and candy counters in bank lobbies would become supportable as an incidental banking operation and not proscribed by section 24 (*Houston v. Drake*, 97 F. (2d) 863 (1938)).

18. Leasing of personal property

It is stated in paragraph 3400 of the "Comptroller's Manual" that a national bank may become the owner and lessor of personal property acquired, upon the specific request, and for the use, of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. These transactions do not result in obligations subject to the lending limits set forth in 12 U.S.C. 84. Since lease payments are in the nature of rent rather than interest, they are not subject to 12 U.S.C. 85 and 86. This ruling is challenged on the grounds that it is not provided for by law and contrary to the clear intent and purpose of Congress contained in 12 U.S.C. 84.

The Comptroller's ruling which recognized the authority of national banks to engage in the direct leasing of personal property was the result of a reexamination of the statutory corporate powers of national banks.

Paragraph 7 of 12 U.S.C. 24 authorizes a national bank to exercise "all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating * * * evidences of debt; * * *." Prior to the Comptroller's ruling, a lease financing transaction had been considered within the authority of a national bank only to the extent that the transaction could be regarded as the discount or the negotiation of an evidence of debt. It followed that such transactions were subject to the lending limits contained in 12 U.S.C. 84. Previous rulings recognized that certain lease paper could be discounted or negotiated and would qualify under exception 13 of 12 U.S.C. 84. Under some circumstances, the obligation of the discountor or negotiator of such paper (ordinarily the lessor) is not subject to the lending limit.

A careful study of lease financing indicated that transactions in which the economic function of the lessor had been reduced to a minimum were already an important part of the business of banking. In these transactions a bank lent money to a lessor solely upon the credit of a lessee for the purchase of property specifically requested by the lessee for its immediate possession and use. The lessor acted solely as a holder of title and as a nominal debtor. He was a relatively expensive retailer of bank credit necessary only because a lease transaction required an owner and lessor of property, and because the bank supervisors required an evidence of debt. The recognition that in some cases a lessee could be regarded as a debtor under 12 U.S.C. 84 approached, but did not reach the solution of the problem. A debtor-creditor relationship did not meet the needs of the lessee.

Solution of the problem, however, required only the recognition that the economic development of the United States had brought this form of lease financing into the business of banking. The business of banking, like the law merchant, continues to grow to meet the needs of commerce. Paragraph 7 of 12 U.S.C. 24 clearly authorizes national banks to carry on the business of banking. The "business of banking" clearly is not limited to the transactions described in paragraph 7. It is not necessary to fit lease financing into the narrow confines of the negotiation of an evidence of debt. It is, in fact, necessary to the business of banking to recognize that the leasing by the bank of personal property acquired upon the specific request of and for the use of its customer, and the incurring of such additional obligations as may be incident to becoming an owner of personal property and the lessor thereof, is a lawful exercise of the powers of a national bank and necessary to the business of banking.

The limitation contained in 12 U.S.C. 84 applies specifically to the discounting, negotiation, and guarantee of evidences of debt. If, as indicated in the preceding paragraphs, lease financing is not the negotiation of an evidence of debt for the

purposes of 12 U.S.C. 24, there is no reason to regard it as such for the purpose of bringing it within the limitation of 12 U.S.C. 84. Certainly, the acquisition of personal property is not within the limitation, and the payment of rent is ordinarily regarded as compensation for the use of property and not as the payment of a debt.

18. Ruling (par. 3400) that a national bank, upon request of a customer, may engage in equipment leasing without contravening 12 U.S.C. 84, 85, 86

Without attempting to appraise the relevance of the Comptroller's contentions as to 12 U.S.C. 84-86, the activity sanctioned by this ruling would appear to be the least supportable of any that he has issued. By no accepted judicial interpretation of the powers allotted to national banks by 12 U.S.C. 24 can equipment leasing be viewed as an authorized activity of national banks. Not only do the relevant decisions clearly establish that the "incidental powers" clause will not sustain a national bank in embarking upon a mercantile activity merely because it is deemed to be convenient and profitable; but they also hold that a national bank is lacking in authority to acquire property, whether tangible personalty or real estate, which is not essential to its operations as a bank.

Property may be acquired and thereafter sold only to the extent that such acquisition and disposition will enable a bank to reduce or avoid losses on permissible outstanding loans. Thus, if a bank had extended a loan to an equipment leasing company which had defaulted, the bank would be warranted in taking over the company and operating it briefly with a view to collecting said loan or minimizing a loss thereunder. However, no precedents have been recorded which would support a national bank's venture into equipment leasing. Such an activity not only would bring it into competition with existing mercantile establishments engaged in leasing, but, if tenable, also would justify a national bank's venture into retailing akin to that now conducted by Sears-Roebuck and Montgomery Ward: If leasing of tangible personalty is a permissible activity, then a national bank with equal justification, could be sustained in buying and reselling the same under conditional sales contracts. In short, all limitations against embarking upon unrelated mercantile activities would fall with the sanctioning of equipment leasing (*Texas & Pacific Ry. Co. v. Pottorff*, 291 U.S. 245 (1934); *City of Yonkers v. Downey*, 309 U.S. 590 (1940); *First National Bank v. Bannister*, 7 Kans. App. 787; 54 P. 20 (1898); *First National Bank v. McKown*, 73 Okla. 310; 176 P. 248 (1918); *Atherton v. Anderson*, 86 F. (2d) 518 (1936); *Birdsell Mfg. Co. v. Anderson*, 104 F. (2d) 340 (1939) and 20 F. Supp. 571 (1937)).

19. Purchase or sale of securities subject to repurchase agreements.

It is stated in paragraph 1131 of the Comptroller's manual that the purchase or sale of securities by a bank, under an agreement to resell or repurchase at the end of a stated period, is not a borrowing subject to 12 U.S.C. 82 or an obligation subject to the lending limit of 12 U.S.C. 84. This ruling is challenged on the basis of being contrary to the clear intent of Congress contained in 12 U.S.C. 82 and 84 which impose borrowing and lending limitations, respectively, on national banks.

In form as well as legal effect, such transactions are neither borrowings nor lendings but rather are purchases and sales. The only possible justification for inclusion of such transactions within the lending limitations is that, in isolated cases, they may be used to evade the lending limit. However, the vast majority of purchases and sales are for valid and legitimate nonborrowing purposes, such as the obtaining of collateral security for public deposits.

As stated, this ruling is entirely consistent with the substance and realities of a legitimate part of the banking business. As a responsible regulatory body, the Comptroller's Office cannot, because of possible isolated instances of evasion of applicable statutory limits by a few bankers, view transactions as being applicable to statutory limitations which, in fact and in law, are not applicable.

19. Ruling (par. 1131) that the purchase or sale of securities by a national bank under an agreement to resell or repurchase at the end of a stated period is not a borrowing subject to 12 U.S.C. 82 nor an obligation subject to the lending limit of 12 U.S.C. 84

An agreement to resell, at a future date, securities having an agreed value or an ascertainable value would seem to give rise to an obligation akin to an indebtedness within the meaning of 12 U.S.C. 82; for the latter restricts liability as well as indebtedness. For the same reasons an agreement to repurchase would

give rise to an obligation or a liability. Moreover, this section has been construed as imposing a limitation on the power to enter into contracts sanctioned by 12 U.S.C. 24 (Third), notwithstanding the relevance or irrelevance of the subject matter of the contract (*Eastern Township Bank v. Vermont National Bank*, 122 F. 186 (1884); *Weber v. Spokane National Bank*, 64 F. 208 (1894) Century Digest, Banking, key No. 987, Decennial Digest, Banking, key Nos. 234, 260(1)). Moreover, *Awotin v. Atlas Exchange Bank*, 295 U.S. 209 (1935) is authority for this conclusion; namely, that a contract to repurchase or to resell securities normally gives rise to a liability in the sense of an obligation to perform. The last-mentioned case, however, is factually irrelevant to the extent that it relates to the nonliability of a national bank when it enters into agreements with customers for the purchase of securities without recourse. However, the strict definition of the term, "obligations," as it appears in 12 U.S.C. 84, would seem to render the latter provision inapplicable to the contracts described in this ruling.

Suggested by the Comptrollers' answer is an inability to distinguish between an obligation dispelled upon consummation of a contract and a liability pending prior to the date fixed for the fulfillment or performance of a contract.

20. Underwriting by national banks

Under the provisions of paragraph seventh of 12 U.S.C. 24, national banks are empowered to underwrite and generally trade in those securities which constitute general obligations of a State or a political subdivision of a State. After a thorough study of the issues, the Comptroller rules that a number of types of municipal securities, hitherto thought to be ineligible for underwriting and general trading by national banks, had sufficient elements of a "general obligation" to qualify them for such underwriting and trading. Further, in the first major revision since 1934, the authority of national banks to purchase investment securities was restated and reinterpreted in a new investment securities regulation which became effective on September 12, 1963.

This new regulation for national banks reflects the Comptroller's effort, within his statutory authority, to enable the banking system to perform more effectively, yet safely, the vital function of facilitating the flow of investment funds into their most productive uses. In a private enterprise economy, this task of aiding the mobility of capital is one of the most significant responsibilities of the banking system.

The regulation is challenged as being contrary to paragraph seventh of 12 U.S.C. 24, presumably because the Comptroller has concluded that a bond may constitute a public security even though it is not supported by general powers of taxation possessed by the obligor of the bond. The contention that in order for bonds to constitute a general obligation of a State or any political subdivision thereof, they must be issued by a political unit possessing powers of general taxation and must be supported by such powers is without merit. Such a requirement clearly is not imposed by the provisions of paragraph seventh of 12 U.S.C. 24. Similarly, neither the legislative history of those provisions nor any relevant judiciary decisions warrants the imposition of such a requirement. Bonds which are adequately supported by substantial resources of a political unit are eligible for bank underwriting and there exists no statutory authority on the basis of which the Comptroller's Office, in the exercise of its regulatory and supervisory responsibility as required by paragraph seventh of 12 U.S.C. 24, could conclude and therefore require as a condition precedent for bonds being eligible for underwriting, that the political unit issuing such bonds possess general powers of taxation and that the bonds must be supported by such powers.

20. Ruling (12 CFR 1.2) as to dealing in, underwriting and holding of investment securities by national banks

The Comptroller acknowledges, in 12 CFR 1.2, that national banks are subject to the statutory 10-percent limitation insofar as they invest in "investment securities." In 12 CFR 1.3(b)(c) he distinguishes between "investment securities" and "public securities"; and includes within the latter, full faith and credit obligations of States and their local subdivisions. Such public securities are exempt from the statutory 10-percent limitation applicable to investment securities.

Among the rulings issued by the Comptroller in 1963 defining the status of securities issued by various State and municipal subdivisions, he describes as the equivalent of full faith and credit securities and therefore eligible for investment

without limitation the following securities whose status as such is dubious. He seems to have based his conclusions, relevant to those securities which he labeled eligible for unlimited investment, upon findings that special districts are the equivalent of municipal corporations or that State authorities which are assured leasehold income from municipal tenants of the former's instrumentalities have the prospect of receiving income adequate to amortize their outstanding indebtedness.

Mr. MULTER. You may proceed, sir.

Mr. KAUFMAN. Thank you, sir.

I think that we in the accounting field recognize the fact that banks are making very substantial investments in automatic data processing and recordkeeping equipment, and I think that the basic purpose behind the purchase of this equipment was for efficiency and more modern methods in maintaining their records and furnishing their banking services to their clients and depositors.

But I think the problem has been a growing problem. As a result of their investment in these expensive pieces of equipment they find that the efficiency of the equipment is such that it does not require continual use on a maximum basis, based on the size of the investment they are making, and as a result banks are looking for means to fill that lack, the so-called slack time, that they have in this equipment.

They have payroll problems and they have operating costs, and of course they have the depreciation factor of the equipment itself, which they must offset, and as a result I think this is one of the reasons that the banks turn to the idea of furnishing very many services to the public.

We are not opposed to them furnishing many varied types of services to people, but we are opposed to them furnishing accounting type services, and this is the basis of our objection. I for one, am presently installing EDP equipment in my own offices to handle certain types of work and to create a better efficiency in our own accounting processes, and the development of materials, so that our interpretation of these various figures and financial statements will be more efficient in our work with our clients.

However, I think we must recognize one particular point, and we will present various advertising materials that I would like to submit into the record. Most of these advertisement proposals indicate that they are offering accounting services (exhibiting documents).

(The advertisements referred to follow:)

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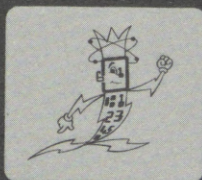
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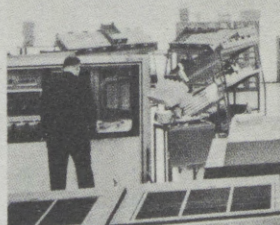
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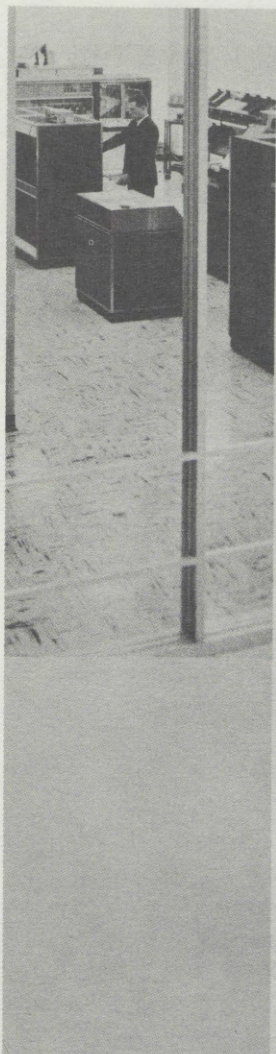
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A complete record of all business billed during the month, including general ledger posting figures for receivables, payables and commissions plus a statistical breakdown by amount of new and renewal business and by class of business.

● ACCOUNT CURRENT STATEMENTS

A separate listing in triplicate for each of your underwriting companies, showing premiums due for the current month. (Advance billings do not appear until current.) The same statistical information as in the Policy Register is given by *company*.

● PRODUCER STATEMENTS

A commission statement for each producer reflecting current business written for the month, with subtotals by company. This also furnishes, by *producer*, the same statistical information as the Policy Register.

● CASH RECEIPTS JOURNAL

A recap of all premium payments for the month, showing dates and amounts of payments, as well as general ledger posting figures for *cash received*.

● OUTSTANDING ACCOUNTS RECEIVABLE, WITH AGING

A complete line record of all open accounts with an accurate aging of delinquent accounts.

● ASSURED'S BILLING STATEMENTS

Attractive, machine printed statements for you to send to your assureds, showing them the details of their accounts and the balances due each month. These include tear-off remittance copies for your assureds' convenience.

● CHECK REGISTER

A list of all checks written for the month on the Trust Account, showing check numbers and dates as well as general ledger posting figures for *cash disbursements*.

● ACCOUNTS PAYABLE
AND TRUST ACCOUNT RECONCILEMENT

A monthly reconciliation of your accounts showing how much you owe each company. Also gives a recap by totals, which ties all the reports together, making a complete system with which you can control and determine the status of your business each month.



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with a CleveTrust PAYROLL ACCOUNTING PLAN



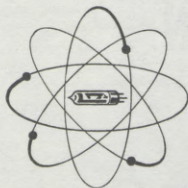
The Cleveland Trust Company

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

The Cleveland Trust Company presents payroll automation

The CleveTrust PAYROLL ACCOUNTING SERVICE

Your company saves by reducing present payroll processing costs. By using the latest type of data processing equipment, the Cleveland Trust Company can make the savings for each of your employees, furnish you the figures and related information, and prepare paychecks or deposit credits to be posted to individual employee checking accounts carried at any of its many convenient banking offices.



CleveTrust PAYROLL SERVICES PERMIT EMPLOYEE FREEDOM OF CHOICE

Each employee is allowed one free withdrawal per pay period . . . service charges are effective only on active accounts. The free withdrawal or transfer provision eliminates all Cleveland Trust service charges for those who wish cash or those who wish to transfer their pay to another bank.

PLAN

Your company submits basic payroll data to establish the service. At the end of each pay period changes concerning employees or extra compensation due are reported. We then compute the company payroll and deposit earnings, or prepare paychecks, as directed. Supplies to open bank accounts are provided by the bank.

The plan provides:

1. A combination earnings statement and deposit receipt for each employee plus payroll checks where appropriate.

2. A printed payroll journal which gives complete information on each employee's earnings.

3. The printed payroll journal shows the following cumulative figures for each employee:

Gross earnings, year-to-date
F.I.C.A. deductions, to date
Withholding tax, year-to-date

4. A printed deduction and trial balance report for each payroll.

5. Quarterly F.I.C.A. report.

6. Annual W-2 tax form for each employee.

Advantages to your company

1. Reduces payroll processing costs.
2. Reduces fidelity risks.
3. Provides segregated handling of executive accounts.
4. Reduces overload on clerical or executive staff.
5. Eliminates reconciliation of paychecks.

Advantages to your employees

1. Each employee has the convenience of a checking account.
2. Pay is deposited to employees' accounts on pay date.
3. Plan eliminates trip to bank to deposit pay.
4. Assures complete privacy.
5. Provides low-cost loans and other banking services.

PLAN 2

Your company may use a signed or unsigned check, marked "for deposit", which bank will use as a deposit ticket to the individual's checking account. An alternate method: the bank prepares a deposit ticket from data provided by company. In both cases company issues one settlement check for the value of employee earnings deposited.

PLAN 3

For executive payrolls, or for traveling employees, company gives bank deposit tickets in duplicate showing employee name, checking account number, banking office where account is carried, and amount. One settlement check is issued by company for the value of the deposits.

BANK-BY-MAIL

Employee paychecks may also be credited to the individual's checking account by using standard Bank-by-Mail forms.

PAYROLL DEPOSITS MAY BE CREDITED TO CHECKING ACCOUNTS AT ANY ONE of Cleveland Trust's BANKING OFFICES

DOWNTOWN

Main Office, Euclid at East 9th

Prospect at Ontario

EAST SIDE

Broadway-57
Broadway-Harvard
Broadway-Libby
Buckeye-116
Cedar-Green
Cedar-Lee
Cedar-Warrens-ville
Chagrin-Lee
152-Collinwood
185-Pawnee
Eastgate
Euclid-49
Euclid-79

Euclid-105
Euclid-Windermere
Euclid-Ivanhoe
Euclid-260
Food Terminal
Garfield Heights
Lake Shore-225
Mayfield-Green
Mayfield-Lee
Miles-133
Nela Park
Northfield-Libby

Payne-55
Shaker Square
St. Clair-40
St. Clair-55
St. Clair-105
St. Clair-125
St. Clair-138
Superior-71
Superior-105
Superior-123
Union-93
Warrens-ville-Farnsleigh
Woodland-55

WEST SIDE

Bay Village
Broadview-Pearl
Brookpark-Broadview
Clark-25
Detroit-101
Detroit-117
Detroit-Cook
Detroit-193

Franklin-25
Lorain-Fulton
Lorain-93
Lorain-117
Lorain-130
Lorain-Rocky River
Lorain-215
Lorain-Brookpark
Madison-124

Madison-Warren
Parmatown
Pearl-Ridge
Pearl-130
Pleasant Valley-Broadview
Puritas-150
Snow-Broadview
7300 York

NORTHERN OHIO

Painesville

Willoughby

Bedford

Solon

Brecksville

Berea

Lorain

LARGEST METROPOLITAN BRANCH BANKING SYSTEM BETWEEN NEW YORK AND CALIFORNIA

WHY NOT REVIEW YOUR CURRENT PAYROLL ARRANGEMENTS
with us so we can point out how you can benefit by our
CleveTrust Payroll Accounting Plans?

If you will  call MAIN 1-1600, Ext. 502 or 556, our
representative will be happy to meet with you to explain in detail
our payroll accounting service and related **CleveTrust**
special services.

TO CHECKING ACCOUNTS AT ANY ONE
OF CLEVELAND TRUST BANKING
OFFICES

Pay to the order of _____ \$ _____

For deposit only
This check is payable to the order of _____
and is subject to the order of the _____
at the time of cashing. It is not valid for cashing
unless it is cashed at one of the _____
offices. It is not valid for cashing unless it is
cashed at one of the _____ offices.

WEST SIDE
This check is payable to the order of _____
and is subject to the order of the _____
at the time of cashing. It is not valid for cashing
unless it is cashed at one of the _____
offices. It is not valid for cashing unless it is
cashed at one of the _____ offices.

EAST SIDE
This check is payable to the order of _____
and is subject to the order of the _____
at the time of cashing. It is not valid for cashing
unless it is cashed at one of the _____
offices. It is not valid for cashing unless it is
cashed at one of the _____ offices.

LARGEST INTERNATIONAL BANKING OFFICE
BETWEEN NEW YORK AND CALIFORNIA

INTERNATIONAL BANKING CORPORATION
CLEVELAND TRUST BANKING OFFICES
CLEVELAND, OHIO
This check is payable to the order of _____
and is subject to the order of the _____
at the time of cashing. It is not valid for cashing
unless it is cashed at one of the _____
offices. It is not valid for cashing unless it is
cashed at one of the _____ offices.

[From THE WALL STREET JOURNAL, Tuesday, October 1, 1963]



**RELAX! GIVE YOUR
BOOKKEEPING HEADACHES
TO NORTH WEST BANK**

WE WILL PERFORM every service your Bookkeeping Department does now . . . at a lower unit cost, made possible through automation*. Check these services:

- PAYROLL
- ACCOUNTS PAYABLE
- ACCOUNTS RECEIVABLE
- COST DISTRIBUTION
- INVENTORY CONTROL
- MANAGEMENT REPORTS
- COMPLETE W2 FORMS
- YOU NAME IT!

IF YOUR BUSINESS IS OUTSIDE SEATTLE, we will be pleased to tell your banker about our automated accounting service. For information, write or phone Somers H. White, President.

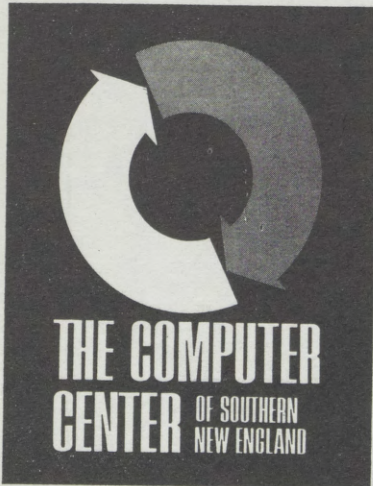
**This service available ONLY at*

NORTH WEST BANK

THIRD & PINE • SEATTLE, WASHINGTON • MUTUAL 2-7800

[From the PROVIDENCE JOURNAL, March 2, 1965]

Get to know your new neighbor.



It's good business.

You're looking at the symbol of a brand-new business. A business set up by Industrial National to help you and your business!

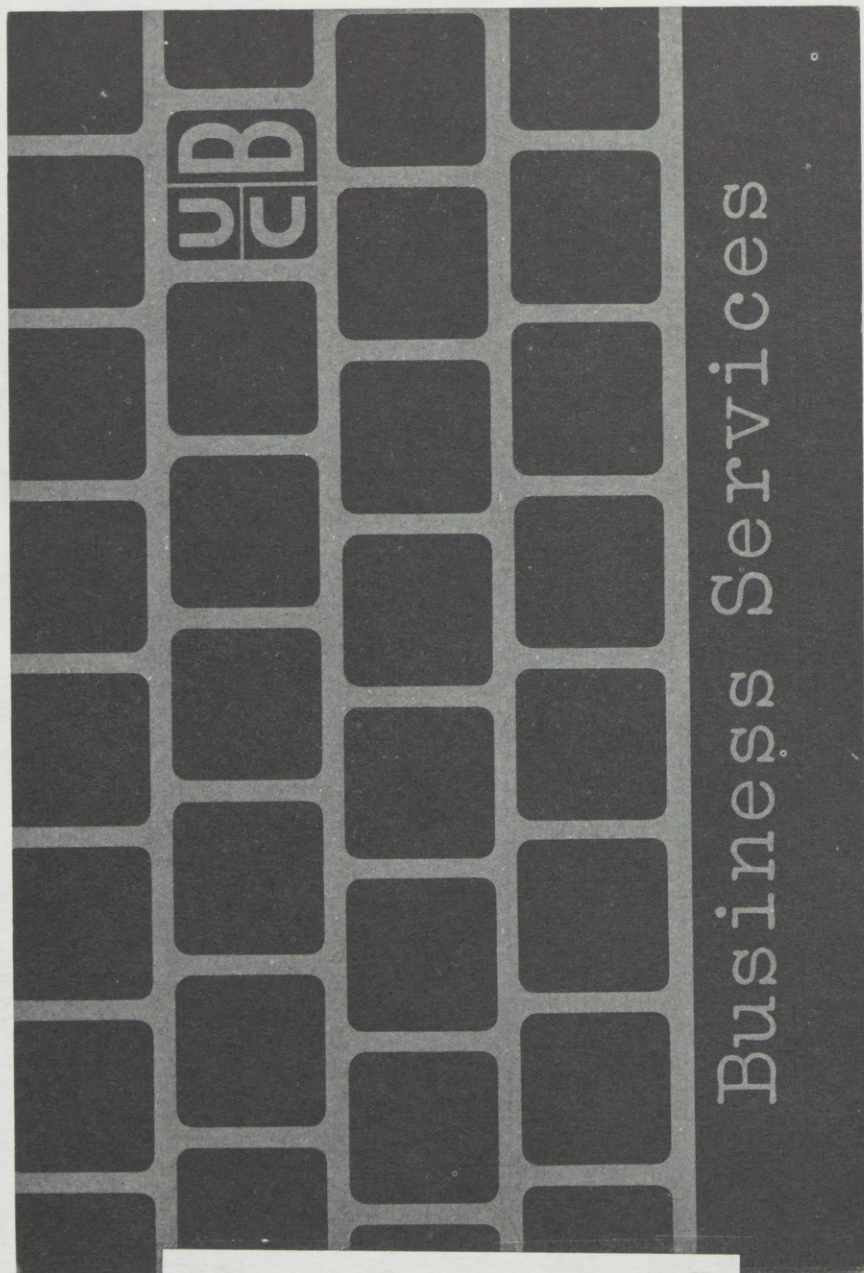
The Computer Center of Southern New England offers a host of helpful automated services — account reconciliation, payroll accounting, demand deposit accounting, expense distribution, mortgage accounting. Other services include preparation of commercial bills, processing of accounts receivable, and comprehensive services for municipalities.

These automated services are provided at Industrial National's Atomic Age Computer Center in Glocester. Designed to withstand the effects of man-made and natural catastrophes, this unique facility assures continuous processing and the ultimate in protection for your records. Learn exactly how The Computer Center of Southern New England can help your business.

Visit Mr. Donald E. Bossi, 520 Industrial Bank Building or call him at UN 1-6100.



**INDUSTRIAL
NATIONAL BANK OF
RHODE ISLAND**



If there is one word of paramount importance to business today, it is change. Recently the most significant change in banking services is the successful development of advanced accounting systems for business and industry. To assist you in meeting this change in your company, United California Bank introduces Business Services. Whether your organization is large or small, whether you are

presently using manual or electronic accounting systems, Business Services offers specialized operational procedures to increase your company's efficiency and potential profitability. A skilled financial consultant will gladly explain the varied aspects of Business Services to you and discuss how your company can best meet the challenge of change by utilizing this exceptional accounting service.

PERSONNEL PAYROLL PROGRAM

This is a complete and confidential payroll preparation service. With speed, economy and accuracy, customers are provided ready-to-issue paychecks, statement of earnings, labor distribution reports, necessary tax reports, management control information and other appropriate documents. Business Services reduces processing cost, clerical time and additional equipment investments.

REAL ESTATE LOAN ACCOUNTING

Business Services handles the specialized accounting requirements of mortgage lending activities for savings and loan associations, mortgage brokers, loan investment firms, insurance companies and other similar organizations. Real estate loan payments, interest, principal and impound computations, and notices of delinquency are received, prepared and processed along with other accounting reports vital to borrower and lender.

SALES ANALYSIS SERVICE

For evaluation by management, significant, analytical and statistical reports are prepared on sales and cost performance. Sales forecasting, cost control, customer research, overall rating of sales personnel and other necessary information will be provided to the customer by Business Services.

OIL ROYALTY PAYMENT PLAN

For companies engaged in oil production, Business Services provides a unique accounting procedure for the computation, preparation and distribution of oil royalty payments on land holdings and/or percentage of production.

COMPLETE RECONCILEMENT SERVICE

Those customers issuing 1,000 checks or more a month for payroll, accounts payable, dividend checks, etc., will greatly benefit from Business Services. Utilizing MICR encoded paper checks or IBM style card checks, paid checks are returned in numerical order with complete journal listings of checks paid, checks outstanding and a statement showing current accounting balance.

BILLING AND COLLECTION SERVICE

Being programed for municipalities, hospitals, marinas and a variety of other businesses, Business Services will provide a billing and collection service for accounts receivable and prepare necessary reports for management. Also beneficial to business is our extensive experience in Remittance Banking which utilizes a lock box arrangement for expediting collection of payments.

INTEREST/DIVIDEND REPORTING SERVICE

The law now requires businesses to report to the government all interest or dividends in excess of \$10 paid to recipients. To assist savings and loan associations and other businesses in reporting this information, Business Services will prepare the legally required Federal Tax Report No. 1099.

SAVINGS ACCOUNTING PROGRAM

To provide a complete or partial bookkeeping service for savings and loan associations, credit unions and other financial institutions with a volume of savings customers, Business Services is now planning a daily processing of savings activity plus interest/dividend computation and other valuable reports to management.

LOAN PAYMENT ACCOUNTING

To assist credit unions and financial companies, Business Services will soon make available a specialized accounting program providing accurate bookkeeping records for both borrower and business.

ACCOUNTS PAYABLE PLAN

Designed to reduce the clerical efforts and expenses involved in volume invoice processing, Business Services will soon introduce an accounts payable plan to reduce check writing, strengthen credit relationships and assure discounted purchasing as it pertains to specific industries.

MUTUAL FUND ACCOUNTING

Other programs being considered for development are:

INVENTORY CONTROL PROGRAM

BROKERAGE ACCOUNTING SERVICE

Business Services can assist mutual fund organizations in their complex accounting functions. However, since this service can be highly varied, it is suggested that an analysis be made of the individual company's operation to determine specific needs.

Mr. KAUFMAN. Now, when banks say "accounting services," we feel that this is not a proper type of service for them to offer, because accounting services require an interpretation, an expression of an opinion, a decision as to whether an item is a capital item or an expense item, or whether it is considered a current asset, in the various categories of a financial statement.

I do not think that the ordinary operator of a computer or any automatic data processing type of equipment will be in a position to interpret and make decisions as to where these various items should go. This becomes a misnomer, as far as their indication of the value of their services is concerned. The small businessman and the average person who, in dealing with a bank, might misinterpret their advertising program, and feel that they are getting full accounting services, including full interpretation of their records and materials, but sometimes with disastrous results.

We have included in our testimony some correspondence and information from accountants in various sections of the country who indicate that they have dealt with people who took the statement of the bank as being absolutely accurate, and who believed the bank expressing its opinion to them was perfectly proper. And yet, when an examination of the records of that firm was made by a governmental agency, it was found that the records were not proper and that the allocations for various items were not properly placed. As a result this one firm owed substantial funds for additional taxes, so much so that it was placed in jeopardy, and in an attempt to straighten itself out, had to go through a chapter 11 bankruptcy reorganization in order to protect itself and its own assets.

It had been fully dependent upon the operation of the bank's accounting program.

We have other businessmen who have indicated to us that, if the banks were not operating their records, their line of credit would be placed in jeopardy. These are things that create tremendous problems.

In prior years, and I think it is still part of the requirements, Federal agencies in examining bank activities look at their loan accounts, and they require an inspection of the financial statements that have been submitted, and they ask if these statements have been submitted by independent practicing accountants, and whether these are the things that they base loans on. I know that bankers know that when they don't have these statements in their records, occasionally they receive some letters from regulatory agents indicating that they are not fulfilling their obligation.

What happens when the bank is doing the entire program, doing the bookkeeping, and preparing all the financial statements? Where is the independence? Where is the requirement that the records be audited or the financial statements have an expression that is completely independent from the bank itself?

This becomes a situation where we again have this cradle-to-the-grave proposition, where a man goes into the bank and the bank takes over complete control of his business. The bank tells him how to operate, the bank tells him whether he needs money or does not need

money, and if he needs money, how much money they are going to give him, and things of that nature. The man no longer is in self-control of his business, and I think this becomes a very important consideration involved here.

I would like to indicate that in the correspondence we have received from various sections of the country, some of our members have indicated the problems that they feel. I would like to quote one, a member from Michigan, who stated that he had been in business as an accountant for 13 years, and during that time he had been working closely with small businessmen. He felt that the small businessman was completely dependent upon the fact that the accountant was basing his opinions as an independent person and was working with full responsibility for the individual client, and recognized the fact that the accountant did nothing else but this type of work.

And when it came to competition with the bank in offering these services, he could not afford to compete with the bank because of the fact that the consideration on the part of the bank was that they were filling in their time and if the businessman would become an active depositor of that bank, this would be further consideration to the fee structure that they would charge for the services that they were offering. We found this indicated time and time again in various correspondence we have received.

We have one matter, which I suppose could be an argumentative matter, that happened in California. One of our members has reported to us that he had recently completed teaching an accounting course to a group of bank personnel through the American Institute of Banking. He reported that the original enrollment in his class was 30 students. There were 13 dropouts and 4 of the remaining students, he reported, did not receive a passing grade, even though they had ample text material provided, and the final examination was reviewed 1 week prior to the examination date.

He asked the questions: Are these the type of people you want to handle accounting for your business? What do you want these people to do? Would you want these people to develop the figures necessary for the preparation of your tax return?

Of course, the answer definitely would be "No."

I think that an accountant recognizes progress. We are not opposed to progress. Every one of us is looking to and recognizing the value of ADP equipment, but we feel that we must recognize and evaluate ADP equipment for its specialized use. It is not a cure-all. It is a means to facilitate obtaining an end result, but accounting is an interpretation. Accounting is not just placing figures here and there.

Mr. MULTER. Give us a typical example of what you are referring to.

Mr. KAUFMAN. Well, we might have a situation where a person sends in the forms that a bank would furnish to them, and shows an expense item, and he might put in there under "Advertisement," for example, that he spent \$500 for advertising. Yet, it was a contribution to a charity organization. Now, he is an individual practitioner, I mean an individual businessman.

The bank, in handling this, would take this form and put it through advertisement expense because the person has indicated on the form that this is an advertising expense. The clerk who handles it in the computer end of it is not going to question this particular item, and it is charged through as advertising.

Mr. MULTER. And as advertising, it would be a deductible expense?

Mr. KAUFMAN. That is right.

Mr. MULTER. Whereas, a charitable contribution——

Mr. KAUFMAN. Would be a personal item.

Mr. MULTER. As a personal item it has its limitations.

Mr. KAUFMAN. Yes; under the law.

Mr. MULTER. The maximum amount of all contributions is limited in accordance with the gross earnings of the individual.

Mr. TALCOTT. Who is making the decision regarding that item, the individual businessman, the bank bookkeeper, or the accountant?

Mr. KAUFMAN. The individual person is making the decision there, because he submits the material to the bank.

Mr. TALCOTT. What difference does it make to the bank, if the businessman makes a decision then, or whether he is submitting the entry to the bank or his bookkeeper or his accountant?

Mr. KAUFMAN. An average person of this nature would no longer have a need for a bookkeeper, because he would simply be furnishing the bank with material on a daily basis or a weekly basis through the use of special forms.

Mr. TALCOTT. So, I submit the accountant doesn't simply determine whether it is wrong and make corrections; he advises before the original entries also.

Mr. KAUFMAN. He makes the correction and in the preparation of the tax return, proper preparation of the tax return. But if the accountant is not allowed, or the accountant is not involved in the preparation of the tax return, as a result of the bank preparing all of the financial statements, including the preparation of tax returns, which they so indicate in their advertising——

Mr. TALCOTT. The accountant would not be involved in any situation until he gets an accumulation of all of the basic figures.

Mr. KAUFMAN. This is true, except for the small businessman. The small businessman is continually in contact with his accountant for advice, continually contacting his accountant for interpretations of the various activities.

Mr. TALCOTT. He would consult an accountant in the first instance and get straightened out, would he not?

Mr. KAUFMAN. That is our point. He no longer uses an accountant because he feels the bank is infallible.

Mr. MULTER. The bank prepares his return, for him, does it not, and files his withholding forms, and all the rest?

Mr. KAUFMAN. That is right.

Mr. MULTER. It takes the figures that he submits and processes them that way, whereas the accountant must analyze them and go over them as he prepares the return, because the accountant must indicate on that return that he assisted in the preparation of the return, pre-

pared the return, and the accountant is responsible, just as responsible as the taxpayer.

Mr. KAUFMAN. That is right.

Mr. MULTER. That is why he must sign the return.

Mr. KAUFMAN. Yes.

Mr. TALCOTT. Do we have any evidence that they are actually performing the professional services?

Mr. KAUFMAN. Yes. For example, one bank offered income tax service, \$4 and up, as a definite service.

Mr. MULTER. As a matter of fact, the Comptroller, at the request of the banking industry, the Comptroller advised banks that it is perfectly proper for the bank to file these tax returns for the customers of the bank; isn't that so?

Mr. KAUFMAN. Yes, sir.

Mr. STEARMAN. Correct.

Mr. MULTER. Obviously the banks would not ask for that ruling from the Comptroller unless they intended doing it, and they have been doing it.

Mr. KAUFMAN. They have been doing it. We have various ads that indicate they are preparing tax returns.

Mr. TALCOTT. In what State?

Mr. STEARMAN. There is one in Utah—

Mr. TALCOTT. Do they have a certified or a public accountant association in Utah?

Mr. KAUFMAN. I am sure they do.

Mr. TALCOTT. Don't they have laws against unqualified persons filling out tax returns?

Mr. STEARMAN. Not against the preparation of the tax returns.

Mr. TALCOTT. That is not professional accounting, but bookkeeping they are talking about in these advertisements. They can prepare a financial statement the same as you make up one. The question is between accounting and bookkeeping.

Mr. KAUFMAN. They may make the distinction, but the general public doesn't—

Mr. MULTER. Even if there were a prosecution, if the accounting association or an accountant went and complained to a grand jury, and the grand jury indicted them, do you think there is any petit jury anywhere in the country that would convict a bank for doing this when they have a Comptroller's ruling saying it was all right to do it?

Mr. KAUFMAN. No, sir. This advertising says year-round accounting for stores, service stations, contractors, repairmen, and other business firms, as part of this advertisement.

(The advertisements referred to follow:)

Income Tax Service

Including preparation and mailing of state and federal returns, and duplicate copies for your own records.

**\$4
UP**

Every year a lot of people in this area pay more income taxes than they should. And every year a lot of other people get into trouble with the Internal Revenue Service and the Minnesota Department of Taxation because, often through error or misunderstanding, they haven't paid enough.

In doing your tax work we have two objectives:

1. To prepare accurate, honest returns that will keep you in good standing with state and federal tax authorities.
2. To make sure that you pay the lowest tax possible by seeing to it that you get every credit that is coming to you: every tax saving to which you are legally entitled.

Our tax consultants are available for daytime, evening, and Saturday appointments at the red insurance and real estate building. Please phone 628-2285 to arrange for an interview before you come.

On the average, the tax savings that we find save our clients more money than our service costs them.

LOANS TO BUY, BUILD, OR REMODEL HOMES ANYWHERE WITHIN 40 MILES OF PROCTOR

Including the following hard-to-get kinds

Small Homes

Inexpensive Homes

Homes in Remote Areas

Farms

Basement Homes

Home-made

Homes built by the owner

Lakeshore Cottages

Temporary Homes - to serve as a garage or
workshop when permanent house is built

Shell Homes - to be finished later



YEAR-'ROUND ACCOUNTING

FOR STORES, SERVICE STATIONS, CONTRACTORS,
REPAIR MEN, AND OTHER BUSINESS FIRMS

An inexpensive service that does your book-keeping on bank
accounting machines and provides the records you need for income
tax returns, loan applications, and your own business decisions.

"Disentanglement from the increasing mass of paper-work is one
of the small business man's basic keys to profit."

OPTIONAL SERVICES ALSO AVAILABLE INCLUDE:

1. Keeping your accounts receivable records
2. Mailing out monthly statements to your customers
3. Other mailing and letter services
4. Photostating any papers
5. Financing and collecting your larger sales and your install-
ment accounts
6. Payments on all your accounts can be received for your
credit here at the Bank



Hear Ye, Hear Ye...!

**DRAPER NATIONAL BANK
— ANNOUNCES —**

The Newest In Customer Service:

***DNB Is Prepared To Help You With
Your Income Taxes!***

You will qualify for this service if .

*... You have an account at DNB of
\$25.00 or more by Dec. 31, 1964 . .*

*... You fill out DNB's Income Tax
Request card . . .*

*and make an appointment (at your
convenience) to meet with the tax
experts right at the Bank..*

Simple state and federal forms are completed for half the normal
cost, at just \$2.50. Additional forms are given the same reduction
considerations.

***Take The Worry Out Of Taxes This Year:
Call DRAPER NATIONAL BANK now.***

254-3964

12300 South 9th East
Draper, Utah

Mr. TALCOTT. Do you have an association in Utah?

Mr. KAUFMAN. Yes, sir; we are representing part of the association in protesting this.

Mr. TALCOTT. What has been your success in protesting these violations?

Mr. KAUFMAN. Well, not much at the present moment. We are asking for consideration and asking for the adoption of this bill which will be successful.

Mr. MULTER. You have gotten nowhere, so far as the Comptroller of the Currency is concerned, because the Comptroller, as I indicated earlier in the record, has indicated that it was unfortunate for the Congress to write into the law a provision prohibiting banks from rendering nonbanking services.

Mr. TALCOTT. What has been your success in Utah? That is what I am trying to ascertain. I know you are coming to Washington, but I am wondering why you are coming to Washington. Were you unsuccessful in Utah in accomplishing your purpose?

Mr. KAUFMAN. Let me give you just a general statement of some facts, that in the 50 States of the Union, the District, and the various territories, there is really no such thing as uniform accounting laws on the books. Every State has a different law or laws, or a different approach.

Mr. TALCOTT. Is that bad or good?

Mr. KAUFMAN. Not good, to this extent, that there is no uniformity. But we are dealing with national banks who don't come under the regulations of the States.

Mr. TALCOTT. Banks, national banks, or any kind of a bank, come under State law, so far as crimes are concerned, do they not?

Mr. KAUFMAN. Maybe as a result of the Comptroller of the Currency, they don't consider this as being—

Mr. TALCOTT. Would there have been a prosecution? Is there a case that had failed because of this?

Mr. MULTER. We are not concerned here, Mr. Talcott, with a prosecution under State laws. We are concerned here with a national banking act, where the Comptroller of the Currency has control and jurisdiction over the national banks. That is what we are addressing ourselves to. These gentlemen may address themselves to the State authorities and the State legislatures so far as State banks are concerned. This is not the forum for that. They are addressing themselves here to what we can do to make the Comptroller of the Currency and the national banks obey the law as we have written it, and not to make himself a superlegislative body and overrule both the President, who approved the bill, and the Congress that passed the bill.

Mr. TALCOTT. I thought this was a bill to help accountants and small businessmen.

Mr. MULTER. No, it is not to help accountants, it is to prohibit banks from engaging in nonbanking services. The accountants are coming in and making a case, as far as they are concerned, to indicate how this affects their profession. This is only one facet of the overall program.

Mr. TALCOTT. I am not trying to make you angry, I am only trying to get evidence in the record.

Mr. MULTER. I am not angry, Mr. Talcott. I am just directing your attention to the fact that these bills are directed to the National Banking Act and the national banks and not to the State banks.

Mr. TALCOTT. And I am trying to find out what the problem is. These people have designated Utah. I am trying to find out what they are suggesting and the problems they have in Utah. It may be that I am off base here. If I am, I will desist, but here is an example they suggest, and I was trying to find out about it.

Mr. KAUFMAN. Mr. Talcott, we are using this as an example of the type of advertising that has been taking place all over the United States. You asked a question about advertising in reference to income tax and we happened to pick this one out showing in large letters, "income tax service for \$4 and up."

Mr. TALCOTT. Would you rather pick out another one?

Mr. KAUFMAN. It doesn't matter to us which one we pick up. We are talking on the basis of how the provisions in the proposed act affect us as accountants on a national level.

Mr. TALCOTT. So this bank has advertised and you haven't done anything in Utah as a society or as individuals or as an associate society to try and correct it. First of all you come to the Federal Government to try to get a law changed. Do I understand you correctly?

Mr. KAUFMAN. No. We came to the Federal Government in agreement with a proposed law that is being presented.

Mr. TALCOTT. Have you done anything in Utah about this situation?

Mr. STEARMAN. Not as such, because this is not particularly a Utah problem any more than it is a problem of California or New York or any other State.

Mr. TALCOTT. Well, I would consider it a California problem if a bank undertook to do accounting work in California, and I know that some accountants have complained about it, and I thought they had this situation corrected. Now, maybe they haven't.

Mr. KAUFMAN. They may have had it corrected before, but I think as a result of the rulings of the Comptroller of the Currency, we are now starting to have the same type of problems all over again, and our feeling is that the bill that is presently being proposed would alleviate and eliminate this problem, and therefore we are most anxious to see the adoption of this bill as a means of eliminating this problem.

Mr. WELTNER. Mr. Chairman.

Mr. MULTER. Yes.

Mr. WELTNER. Am I in order to ask a question?

Mr. MULTER. Surely.

Mr. WELTNER. Mr. Kaufman, this bill, H.R. 112, would prohibit not only accounting services but also clerical, administrative, book-keeping, statistical, and "other similar services which are not necessarily incident to the proper discharge of the lawful functions of a bank as a depository."

Now, what is your opinion about clerical, administrative, book-keeping, statistical, and other services which would not be considered

accounting services? Are you opposed to banks performing those services?

Mr. KAUFMAN. Mr. Weltner, we have been concentrating our testimony on H.R. 10529 because of the fact that this bill narrows the field of approach of the prohibitions to accounting services.

Mr. WELTNER. You consider each of the items listed in the five paragraphs of section 2 as the province of the field of accounting?

Mr. KAUFMAN. Yes, sir.

Mr. WELTNER. You consider the preparation of financial statements from books of account to be the province of accounting?

Mr. KAUFMAN. It is one of the prime ingredients.

Mr. WELTNER. All you do is take the figures from one piece of paper and put them on another.

Mr. KAUFMAN. Well, Mr. Weltner, I might say the accountant who is an accountant, a professional practicing accountant, would not take the set of figures from one piece of paper and put them on another without examining the records to make sure of substantiating the accuracy of the figures that were on the first piece of paper before he transmitted them and prepared financial statements from them.

Mr. WELTNER. Well, that still doesn't answer the question. The question is, "You take it from this paper and put it on that paper." Now, anybody can do that. I am a lawyer; I can do that. I make my own income tax returns. I don't have to be an accountant to do that.

Mr. KAUFMAN. Nowhere do we express the opinion that you have to be an accountant to prepare your own income tax return.

Mr. WELTNER. Well, you prohibit the preparation of income tax returns here.

Mr. KAUFMAN. By banks.

Mr. WELTNER. But we are talking about what is specifically accounting services, and my initial question was drawn on H.R. 112, which includes services other than accounting services. And you say, I take it, that the only thing you are interested in prohibiting as an activity of the banks is accounting services; is that correct?

Mr. KAUFMAN. That is professional accounting services.

Mr. WELTNER. And your society is not opposed to banks performing, for instance, clerical, administrative, bookkeeping, or statistical services, which are not accounting services?

Mr. KAUFMAN. That's right, we are not opposed to those. But I think there will be other people that might be opposed to the banks performing administrative services that were not part of their duties as a fiduciary.

Mr. WELTNER. The only thing your association wants to prohibit is the practice of accounting by banks?

Mr. KAUFMAN. That's right, sir.

Mr. WELTNER. Doesn't every State have a law that prohibits the practice of accountancy by persons who are not duly licensed or registered in that State?

Mr. KAUFMAN. The majority of States have laws on their books, but each law, as I said before, is different. They are not uniform in the various States of the country. It has been indicated to us that the National banks come under Federal jurisdiction and under the juris-

diction of the Comptroller of the Currency, and of the Federal Reserve Board, and their interpretations of what a bank can do or cannot do is the governing factor, as far as the national banks are concerned.

Mr. MULTER. Mr. Weltner, before you came in I indicated it was my opinion, in view of the Comptroller's ruling in this matter, that even if you got an indictment from a State grand jury, no petit jury would ever convict in the light of the Comptroller saying this was all right for the bank to do it, no matter what the local accountancy laws might be.

Mr. TALCOTT. If the gentleman would yield, that is not a true fact.

Mr. MULTER. What is not?

Mr. TALCOTT. I think that is just a conclusion that you have drawn.

Mr. MULTER. I didn't state it as a fact. I stated it as an opinion. Now, if you have a contrary opinion on it there is no objection to you stating it on the record.

Mr. TALCOTT. Well, Mr. Weltner should not be foreclosed from his examination because his line of questioning contradicts your conclusion or your opinion.

Mr. MULTER. I didn't know that I was trying to foreclose him from anything. I just wanted him to know what had been said before he came in.

Mr. WELTNER. I don't consider myself foreclosed here from examining the witness.

Mr. ST GERMAIN. May I ask my colleague if he would yield to me at this point?

Thank you, Mr. Weltner.

In Rhode Island, as I recall, when I was in the State legislature there, we passed legislation having to do with accounting, and at that time we added a grandfather's clause that only those people who are graduate accountants and—don't we have a requirement of an examination in Rhode Island, Mr. Kaufman?

Mr. KAUFMAN. Just the certified public accountant examination.

Mr. ST GERMAIN. No other?

Mr. KAUFMAN. No other examination. We attempted to amend the law to add a clause for an examination.

Mr. ST GERMAIN. This goes back to about 1956. I know it passed the House.

Mr. KAUFMAN. But it didn't pass the Senate.

Mr. ST GERMAIN. So we have no regulation now of just public accountants in Rhode Island?

Mr. KAUFMAN. We have a regulation of public accountants registering as public accountants under a closed door, dying class legislation now in Rhode Island.

Mr. ST GERMAIN. In other words, you are covered by that?

Mr. KAUFMAN. Yes.

Mr. ST GERMAIN. You are not a CPA?

Mr. KAUFMAN. No.

Mr. ST GERMAIN. You are covered by that legislation in Rhode Island?

Mr. KAUFMAN. Yes.

Mr. ST GERMAIN. Under the circumstances, on the preparation of income tax returns, it was my opinion that under this legislation when

we passed it that no longer could any John Doe prepare an income tax return, that he would have to be a public accountant, a graduate public accountant from a certified school.

Mr. KAUFMAN. No, Mr. St Germain. The act as passed, and I think as interpreted by the attorney general of the State of Rhode Island, said that we could not control, under State law, the preparation of Federal tax returns. I think there was a supplementary bill which was the so-called lawyers' bill, and which did not allow for people to advertise the fact that they prepared income tax returns, nor could they put signs up in Rhode Island. No one is supposed to have a sign indicating that they prepare tax returns or do any advertising for the preparation of tax returns.

Mr. ST GERMAIN. Therefore there would be no State law in control in Rhode Island to prohibit banks from doing that?

Mr. KAUFMAN. That's right; no.

Mr. WELTNER. Well, following that, what is prohibited in the State of Rhode Island? Can anybody practice accountancy?

Mr. KAUFMAN. No, sir. The law specifically indicates who can practice accountancy.

Mr. WELTNER. Who can?

Mr. KAUFMAN. Only those who are registered under the act and those who have been grandfathered in under the act, and those who now pass the—

Mr. WELTNER. CPA examination?

Mr. KAUFMAN. The CPA examination.

Mr. WELTNER. Now, if this act passed, would the prohibition against national banks in the State of Rhode Island be a prohibition to prevent them from practicing as a CPA, or practicing as a registered public accountant under the grandfather statute?

Mr. KAUFMAN. You mean this act?

Mr. WELTNER. Yes.

Mr. KAUFMAN. I don't think this act would have any effect on what the State law had.

Mr. WELTNER. I said, would it prevent a national bank from practicing accountancy, as a CPA or as a registered public accountant?

Mr. KAUFMAN. Well, I don't feel—

Mr. STEARMAN. The national banks can't do that now, by the use of those terms, since you said as a licensed or registered PA or CPA.

Mr. WELTNER. If that is the case, then, and you don't object to the practice of anything by banks, except accountancy why do we need this bill? If they can't practice accountancy now, and the only thing you want to prevent them from practicing is accountancy, why do we have to pass this bill, to say that they can't practice accountancy?

Mr. STEARMAN. I think under Rhode Island law, as under most other laws, practically all, they can do this type of work. They can perform these various services. They don't call themselves licensed public accountants or CPA's, because they have no license.

Mr. WELTNER. Mr. Kaufman just told me that all these items 1 through 5 were items of accountancy and each one of these things was a practice of accountancy.

Mr. KAUFMAN. Right.

Mr. WELTNER. That does not look right, that doesn't hook up. If that is the practice of accountancy and banks can't practice account-

ancy now anyway, why do we have to pass another law that says you really can't practice accountancy?

Mr. KAUFMAN. Because of the fact that—going back again, and I must go back to the Comptroller of the Currency, he has indicated to the national banks that they can do these things, that this is part of his interpretation of incidental services that a national bank can perform.

Mr. ST GERMAIN. Despite a State prohibition?

Mr. KAUFMAN. Yes, despite a State prohibition.

Mr. ST GERMAIN. Have you in Rhode Island gone to the attorney general and said, "Look, there is a State prohibition here, how come you are letting Industrial National Bank practice accounting?"

Mr. KAUFMAN. The attorney general of the State of Rhode Island has indicated to us, when we asked for an opinion concerning our law in the State of Rhode Island, that nothing in our law can prohibit the preparation of Federal income tax returns.

Mr. ST GERMAIN. Well, forget the Federal income tax returns. How about the other services that are considered as accountant services? The preparation of financial statements, the conduct of audits in the preparation of reports, based on audits, the preparation of payrolls, that they are doing in Rhode Island right now?

Mr. KAUFMAN. Mr. St Germain, when we came 2 years ago to fight on behalf of the passage of the act, we went back and the banks in Rhode Island talked to us, and the services they are rendering, payroll services, for example, are being done under the supervision of the accountant for the business concern. In other words, they have not set themselves up as the final authority. They have not indicated to the client or the businessman in the State of Rhode Island that they can eliminate accountants, that they can do the entire accounting program. They are working under the jurisdiction of the accountants in performing these functions.

Mr. ST GERMAIN. They are preparing payrolls, are they not?

Mr. KAUFMAN. They are preparing payrolls, but they are preparing payrolls on the basis that we accountants have set up as the procedure for them to use; as to deductions, as to the methods of arriving at those deductions, and the items to be considered, and their preparation. For example, the 941's, the quarterly reports, are submitted to the accountants for verification purposes.

Mr. ST GERMAIN. Therefore the situation in Rhode Island at the present time is one that actually is not troubling you as much as what could happen in the future; is that right?

Mr. KAUFMAN. That is right. The potential of the future, if this act is not passed. There can be an increasing situation where business and the individuals will forgo the use of the accounting profession and feel that there is no need for accountants because of the fact that the bank is making the service available.

Mr. ST GERMAIN. In Rhode Island we have but one bank that has a data processing service.

Mr. KAUFMAN. One—

Mr. ST GERMAIN. Its own.

Mr. KAUFMAN. One that has done it now, but there is a second one that is starting to announce that they are having these services available.

Mr. ST GERMAIN. Are they going to use the Industrial National's services, or are they going to set up a computer center of their own?

Mr. KAUFMAN. Of their own.

Mr. WELTNER. Mr. Kaufman, are you saying you are satisfied with the Rhode Island situation because although the banks perform all those services, they do it under the supervision of accountants?

Mr. KAUFMAN. I am not satisfied, sir. I am saying that at the present moment they are or have recognized certain things, certain problems that they are getting involved in themselves, and are working with accountants in the State of Rhode Island.

Mr. WELTNER. Well, what is wrong with banks, or a bank, working under the supervision of accountants and simply running these things off of the data processing machines? What is wrong with that?

Mr. KAUFMAN. This would be fine, sir, if they would run it off and submit it to the accountant for his approval and his study, so the accountant could finalize it and express opinions to the client, or have control of the material that is being submitted to the data processing service, so that it is handled properly and put in the proper allocations. It is difficult to take data processing material that has been finally returned to you and do an audit of it.

Mr. MULTER. Mr. Kaufman, we interrupted you with questions as you were going along. Have you completed your presentation?

Mr. KAUFMAN. Well, in the process of asking me a lot of these questions, you have covered quite a bit of material.

Mr. STEARMAN. Mr. Chairman, if I may, just on this question of State accountancy laws. To give the subcommittee and the full committee an idea of the divergence of definitions of what constitutes the practice of accountancy, or the practice of public accountancy, under various State laws, I have here in a national society publication some miscellaneous definitions, and with your permission, Mr. Chairman, I would like to have these inserted in the record at this point. I think they will clearly indicate the wide range of definitions and why national action is needed because of the way the various State laws are made up and what they do prohibit in one instance and what they don't prohibit in another, and who can do this and who can do that, and what type of license is required here and what type of license is required there. It just points up this hodgepodge and emphasizes the need. I think, for some national action.

Mr. MULTER. That document will be made a part of the record at this point.

(Sample definitions of "Practice of Accountancy"—State accounting laws, follow:)

SAMPLE DEFINITIONS OF "PRACTICE OF ACCOUNTANCY"—STATE ACCOUNTING LAWS

GEORGIA

"For the purpose of this law (84-201, 84-207, 84-215 to 84-217, 84-9902) a public accountant shall be defined as a person, firm, or corporation having an established place of business and offering to perform for the general public any and all general accounting services. (As added by Act No. 397, Laws 1943, effective March 19, 1943.)"

TENNESSEE

"The practice of public accountancy is hereby defined as holding oneself out to the public as skilled in the knowledge, science, and practice of accounting; as qualified and ready to render professional services therein as a public ac-

countant or certified public accountant for compensation, and performing such work of an accountant for more than one employer on a fee basis, or otherwise, in any of the following services: Auditing, devising and installing systems; recording and presentation of financial information or data; compiling tax returns; preparing financial statements, schedules, reports, and exhibits for publication, credit purposes, use in courts of law and equity and for other purposes. Provided, that the casual preparation of tax returns, the income from which service does not exceed 25 percent of the gross income from regular employment shall not be construed as the practice of public accounting if no representation is made that the person performing such casual service is a public accountant. Provided further, that employment as a staff accountant by a firm of certified public accountants or of public accountants shall constitute the practice of public accountancy within the meaning of this chapter."

NEW YORK

"The public practice of accountancy within the meaning of this article is defined as follows: 'An individual engages in the public practice of accountancy who, holding himself out to the public, in consideration of compensation received or to be received by him, offers to perform or does perform for other persons, services which involve signing, delivery, or issuing or causing to be signed, delivered, or issued any financial, accounting, or related statement or any opinion on, report on, or certificate to such statement if, by reason of the signature, or the stationery or wording employed, or otherwise, it is indicated or implied that such individual has acted or is acting, in relation to said financial, accounting, or related statement, or report as an independent accountant or auditor or individual having or purporting to have expert knowledge in accounting or auditing.'"

NEW MEXICO

"A person engages in the practice of public accountancy within the meaning of this act (67-23-1 to 67-23-30) who, holding himself out to the public as a public accountant, in consideration of compensation received or to be received by him, offers to perform or does perform, for other persons, services which involve the auditing or examination of financial transactions, books, accounts, or records, or the preparation of, or the reporting over his signature on, financial, accounting, and related statements; * * *"

MICHIGAN

"A person, either individually, or as a member of a firm or corporation, shall be deemed to be in practice as a public accountant, within the meaning and intent of this act:

"(a) Who holds himself or herself out to the public in any manner as one who is skilled in the knowledge, science, and practice of accounting, and as qualified to render professional service therein as a public accountant for compensation; or

"(b) Who maintains an office for the transaction of business as a public accountant, or who, except as an employee of a public accountant, practices accounting, as distinguished from bookkeeping for more than one employer; or

"(c) Who offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional services that involve or require an audit or verification of financial transactions and accounting records; or

"(d) Who prepares or certifies for clients, reports of audit, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports which are to be used for publication or for credit purposes, or are to be filed with a court of law or with any other governmental agency, or for any other purpose; or

"(e) Who, in general or as an incident to such work, renders professional assistance to clients for compensation in any or all matters relating to accounting procedure and the recording, presentation, and certification of financial facts."

NORTH CAROLINA

"As used in this chapter certain terms are defined as follows:

"(1) Public practice of accountancy. A person is engaged in the public practice of accountancy who holds himself out to the public as an accountant and in consideration of compensation received or to be received offers to perform or does perform, for other persons, services which involve the auditing or verification of financial transactions, books, accounts, or records, or the preparation, verification, or certification of financial, accounting, and related statements intended for publication, or renders professional services or assistance in or about any and all matters of principle or detail relating to accounting procedure and systems, or the recording, presentation, or certification and the interpretation of such service through statements and reports.

"(2) A certified public accountant is a person engaged in the public practice of accountancy who holds a certificate as a certified public accountant issued to him under the provisions of this chapter.

"(3) A public accountant is a person engaged in the public practice of accountancy who is registered as a public accountant under the provisions of this chapter.

"(4) An accountant is a person engaged in the public practice of accountancy who is neither a certified public accountant nor a public accountant as defined in this chapter."

Mr. MOORHEAD. Mr. Chairman, if I may ask a question.

Mr. MULTER. Certainly.

Mr. MOORHEAD. Mr. Kaufman, I would like to ask some questions comparing H.R. 112 and H.R. 10529.

In Pittsburgh, where I come from, the banks have credit cards, and you can use these cards to charge at various stores, the bill goes right in to the bank, it is paid by them, and then the banks keeps the record and lets you know about what the record is.

Now, under H.R. 112 at least it will be possible to construe that that would be recordkeeping which would be prohibited if H.R. 112 were enacted. Would you agree with me that the banks could continue this credit card service if H.R. 10529 were enacted?

Mr. KAUFMAN. It might be very possible for them to do so.

Mr. MULTER. It seems to me, further, Mr. Moorhead, that if we don't at the same time broaden this so as to prohibit the banks from engaging in this credit card business—

Mr. MOORHEAD. H.R. 10529?

Mr. MULTER. That's right.

In announcing these hearings, we indicated we would take testimony not only on these bills but on whether banks should be prohibited from engaging in any other nonbanking service, including the credit card business.

Mr. WELTNER. Mr. Chairman, in Atlanta we have an institution called the C. & S. charge card, which is, I suppose, similar to Mr. Moorhead's situation, where a great many merchants who do not carry their own credit have this credit available, and that is administered by one of the major national banks there. The party having a charge card can buy just about anything he wants to. The credit is extended by the bank, and that takes an awful lot of recordkeeping, an awful lot of preparation of financial statements from books of account, it takes an awful lot of conduct of audits and preparation of reports based on audits, and it takes a lot of installation and supervision of an internal system of recordkeeping, and internal control of financial data, which are three of the specific subparagraphs of section 2 of this bill, H.R. 10529.

Now, I have not yet heard anyone say it is an illegal or unlawful proposition to have the C. & S. charge card system, and I am just wondering if this bill would make that an improper function.

Mr. KAUFMAN. Well, I think that I might say, Mr. Weltner—

Mr. MULTER. Let us see if we can get it straight on the record, just what this system is.

You said, you referred to a practice administered by a bank. Is the credit card system owned or operated by the bank?

Mr. WELTNER. Yes.

Mr. MULTER. Or merely acting as agent for the merchants who formed this credit card association?

Mr. WELTNER. No. The credit is extended by the bank and the money is owed to the bank once the charge is entered and the purchase is made.

Mr. MULTER. I will make a part of the record the correspondence I have had with the Comptroller of the Currency on this very subject. The point I have made to him and which he has not satisfactorily answered is, the credit card business is not a lending function, it is an insurance function. I have taken the position with him that if a bank should be permitted to get into the insurance business, we ought to amend the statute so as to give them the right to be in the insurance business. This committee and the Congress should meet this question forthrightly and squarely and determine whether banks should be insurance agencies or insurance companies as well as banks.

(The correspondence referred to may be found beginning on p. 207.)

Mr. MULTER. I say that under existing law they have no right to engage in this business, which is an insuring or a surety business. The banks do not check each credit card holder as to whether he is a good credit risk or not. They don't limit the amount of credit he may have, which every bank must do in extending credit. They have no right to say, "We will give you as much credit as you like, just draw on it." In some countries, if you open an account, they will let you overdraw up to a certain fixed amount, regardless of how much money you have on deposit. In this country it has been traditional that you must have money on deposit before you can draw on it. In fact, in most jurisdictions in this country it is illegal and sometimes criminal to issue checks against insufficient funds.

In the credit card business, the way the banks are running it, and the way the credit card companies are running it, all you need do is apply for and become a member of the credit card system. You pay a fee for it, an annual fee, and then you have unlimited credit. That is what these banks are doing, in violation of existing statutes. Now, if we decide they should have that right, let's give it to them. I take the position that they don't have that right under the existing statutes. I take the further position that we should not give them that right.

Mr. MOORHEAD. Mr. Chairman, I don't think this hearing should proceed until I get my credit card back.

Mr. MULTER. Let the record show the credit card has now been returned.

Mr. ST GERMAIN. Another thing which occurs to me, Mr. Chairman—a couple of questions.

No. 1, does the bank that is—in other words, Mr. Moorhead showed us his credit card. Are you paying the bank an annual fee for this credit card as is paid to the major credit card companies? And additionally, is the individual with whom you charge paying 5, 6, 7, 8, 10 percent to the bank when they forward on their bill? Would you know that?

Mr. MOORHEAD. I don't know. I have not used it. So I am not charged anything.

Mr. ST GERMAIN. I realize the gentleman doesn't really need a credit card with his standing in the community.

Mr. MOORHEAD. There is a charge if you use it.

Mr. ST GERMAIN. There is a charge to the user?

Mr. MOORHEAD. To the user.

Mr. ST GERMAIN. And the member firm?

Mr. MOORHEAD. I would be glad to find that out.

Mr. ST GERMAIN. Unless these charges are made, I think it's important to the overall function of a bank, and to the depositors or stockholders of that bank, if it not be a mutual bank, to know whether or not the bank's entering into this credit-card business is costing the depositors or the stockholders of the bank money, and if so, then it is improper.

I would imagine, therefore, they must be making a profit on it.

Mr. MULTER. Let me indicate the manner in which they are operated.

Many banks have bought existing credit-card companies. They have bought the stock in the companies. They continue to operate these companies as independent organizations owning the stock of them.

In all of these credit-card companies, the customer applies for a credit card, and usually pays a small annual fee for that card.

The credit-card companies in turn have made contracts with the customers with whom the credit-card holder deals. In other words, whether it be a department store, a restaurant, or what have you, the holder of the credit card or the member of the credit-card system, for which he pays a fee to the company, then goes to a merchant, restaurateur, or what have you, and makes his purchase. Being guaranteed the amount of the bill by the credit-card company, the merchant does not inquire into the credit risk of the customer who presents the card. He extends the credit to the customer, knowing that it is guaranteed by the credit-card company.

The credit-card company in turn, upon receipt of those vouchers from the merchant, makes payment to him less a commission or fee ranging from 5 to 10 percent, depending on the area of the country, the size of the company, and the like.

This fee, in effect, I say, is a premium charged by the credit-card company for an insurance or guarantee of the customer's account.

Now, when the bank acquires stock in that company, it is running the company. I say this is not a banking function, it's an insurance function.

Other banks, on the other hand, have issued their own credit cards, and more or less on the same basis. Some make a charge to the customer for the credit card, some do not. But the customer in turn

goes to the merchant. The merchant does not check his credit. The bank does not check his credit. He makes his purchase, signs the voucher for it, the voucher is presented by the merchant to the bank.

In some instances the bank makes no charge. In other instances they do make a charge. Sometimes there is a level beyond which they start to make the charge.

In some instances if the merchant does a certain amount of business there is no charge made for the handling of the account. As it runs over certain amounts, the percentages vary. In other cases the bank will make a charge to the merchant regardless of the amount.

In other words, the same as the credit-card company does, they charge a fee for the guarantee of the account.

Mr. WELTNER. Mr. Chairman, if H.R. 10529 becomes law, in your opinion, would that prohibit the use of bank-issued credit cards?

Mr. MULTER. In its present form, no. None of the bills in their present form prohibit the banks from owning credit-card companies or issuing credit cards. I hope they will be enlarged to do that.

Mr. WELTNER. You hope this bill might be enlarged to do so?

Mr. MULTER. Yes.

Mr. TALCOTT. Where does the objection come from against the banks participating in the credit-card business?

Mr. MULTER. The answer to that question will be developed.

Mr. TALCOTT. What is the difference, Mr. Chairman, between—take myself, for example—if I went into a store and gave them my check on a bank, or signed the credit-card form?

Mr. MULTER. The difference is when you draw a check, the bank does not make a charge to the customer for clearing the check, and he does not make a charge to you for having the account there, other than what it may be in connection with the account, depending on the size of your account, whether it is a special account where they charge you so much for a check or not, plus the fact you must have the money in your account to meet the check when you issue it.

Mr. TALCOTT. So, in some places where I wasn't known, I could probably not cash my personal check, but I could use the credit card. So, this is an advantage to the seller.

Mr. MULTER. The question is not whether it is an advantage to the seller. The question is whether or not banks should be permitted to engage in the surety and insurance company business. That's the objection I'm raising.

Mr. TALCOTT. Is there any more surety than in the cashing of a check?

Mr. MULTER. There is no guarantee of the payment of your check by anybody when you present a check to anybody to cash.

Mr. TALCOTT. Yes, that's one difference.

Mr. MULTER. There is no guarantee that the check will be paid. There is no premium charged for it. This is the difference between banking and insurance.

Mr. TALCOTT. But, there is no one else in this type of insurance. So, we are not encroaching on anybody else's insurance business.

Mr. MULTER. It's not a matter of encroaching on anybody else. The question is you have here banks which are authorized to do a banking business. Are we going to let them do an insurance business? If we

let them do it with credit cards, why not let them write every type of an insurance policy—fire, accident, and all that goes with it.

When the savings banks wanted to write life insurance in some of the States, they had to get a specific right to do that. In some cases, the States gave them the right to sell life insurance within certain limitations. Some States did not. Needless to say, the insurance can be sold only to one of its depositors, and only a certain amount which was fixed by statute so they could not engage generally in the life insurance business.

Mr. TALCOTT. I can understand that. I do not yet understand the objection to banks being in this limited type of insurance business.

Mr. MULTER. I suggest that the Congress must forthrightly meet this issue. If banks should be permitted to engage in the insurance business, let's write it into the statute. If they should not, let's say so. Because they are doing it. They have no right to do it under existing statutes.

Mr. MOORHEAD. Will the subcommittee hear from representatives of the banking industry?

Mr. MULTER. Yes. IBA has indicated they will submit a statement. ABA has been asked to testify.

Mr. MOORHEAD. I hope you will direct their attention to this.

Mr. MULTER. They have all been alerted to the fact that these hearings, while addressed to these three bills, will also go beyond these bills, in accordance with the request of the chairman of the full committee to me—that we take testimony on the overall picture of all of the things that banks are doing that they have no right to do, and meet that issue forthrightly.

Mr. TALCOTT. Will the gentleman yield? I would like to ask one question of Mr. Kaufman.

My question is generally about the use of certified public accountants in banks. What if a bank had a certified public accountant on its payroll. Then would you have any objection to the bank performing these accounting services?

Mr. KAUFMAN. I can only answer by asking what is the attitude of the American Bar Association on the retaining of attorneys by banks to express legal opinions? Are they expressing opinions to the bank or expressing them to the customer of the bank?

Mr. MULTER. Let me answer that for the lawyers. In State after State, banks have been held guilty of contempt of court for practicing law when they rendered legal advice or rendered legal services to their customers. The bank lawyer may render the legal services to the bank only, whether it be acting as an agent, trustee, or in its own right. But the courts have explicitly said banks may not do that for their customers. Now, you may ask this as to your profession. Should a bank be permitted to sell accounting services, even though they have a certified public accountant on their payroll? Your association takes the position they should not be permitted to sell accounting services.

Mr. KAUFMAN. That's right, sir—because it would be the expression of the certified public accountant, or the licensed accountant, in the employment of the bank rendering opinions to the bank itself, not to a third party.

Mr. TALCOTT. Yes, I understand that. But if we had certified public accountants in the bank's employ, they would probably be protecting

the user of the bank's services. So you are more concerned with your industry than you are with the protection of the customer.

Mr. KAUFMAN. No. I can picture a bank, if I might say, like the Bank of America in California with 175,000 businesses suddenly making use of their computer service, and a certified public accountant is going to render an opinion on 175,000 accounts as far as that bank is concerned. Or he is going to express an opinion on 175,000 financial statements? It would be very interesting to see, sir.

Mr. TALCOTT. But in this particular case, the example that you gave earlier, where a small businessman had charged to his advertising account a contribution to a church or charity, the certified public accountant on the bank's payroll would get that straightened out; wouldn't he?

Mr. KAUFMAN. I doubt it very much, sir, because of the fact that the bank, in order to expedite its services, uses forms, which it furnishes to its customer and says, "You make your entries on these particular forms" and these are delivered to the bank for processing by the computer service. Unless the accountant in the employ of the bank visits every one of those clients and verifies these items before they are processed—

Mr. MULTER. Let's pursue just that item for one moment.

If a taxpayer files his return, no matter who prepares it, and he charges off as a deduction an item of expense that should have been charged off in the contribution column—when that is audited by the Internal Revenue Service, he will then be charged back with it as an improper deduction, and as a result of that he will have to pay an additional tax, with interest—that is minimum—he may in addition be charged either a negligence penalty or a fraud penalty.

Mr. KAUFMAN. That's right, sir.

Mr. MULTER. Now, it is the duty of the accountant, when he is preparing a return, to check those items to make sure that they are properly set forth in the right column and that the right deduction is made. So he will be advising his client, "Look, if you persist in taking off this contribution as a deduction, you must understand that you are running the dual chance of paying additional interest when they catch up with you, and maybe getting either a negligence or a fraud penalty on top of that."

Mr. KAUFMAN. That is correct, sir.

Mr. MULTER. Is there any duty on the part of the bank to advise the man or to examine his account?

Mr. KAUFMAN. I don't think so.

Mr. TALCOTT. If he is undertaking accounting services—he would have the same obligation to make the same undertaking that an accountant would; would he not?

Mr. MULTER. I don't think a bank is required to ask a customer, "Did you put this item in the proper column?" Nor is the bank required to give him advice. All the bank is undertaking to do is, at least pretending to do, is to do a ministerial act and record for him the items that the customer gives to the bank.

Mr. TALCOTT. But don't you think if the customer taxpayer ran into difficulty with the Internal Revenue Service that he would go back to the bank and say "You gave me some bad advice—I have these penalties"—you are responsible?

Mr. MULTER. That's the point. He got no advice from the bank.

Mr. TALCOTT. You think the bank would not be accountable?

Mr. MULTER. Definitely not in the case as I stated it. The man has submitted his figures to the bank, the bank has the right to take his figures, the bank has a right to assume that he knows what he is doing.

Mr. TALCOTT. Then I think a petit jury or a grand jury, either one, would consider that unfavorably to the bank.

Mr. KAUFMAN. Mr. Talcott, a bank cannot get a Treasury card.

Mr. TALCOTT. Of course not. I don't think they should. I don't think they should get a license to practice accounting or law. This is what I am trying to inquire into. I hope they cannot practice accounting.

Mr. MULTER. Mr. Kaufman, I know you are authorized here to talk on behalf of the accounting association. The accounting association has not taken any position with reference to these other services. But as an individual, as an American citizen, do you think a bank ought to sell public stenography services to its customers or to the general public?

Mr. KAUFMAN. To be honest with you, sir, if I might say it, I get a big kick out of the fact that banks have become department stores as far as I am concerned. You can walk into certain banks and buy travel service, you can make arrangements through the banks for hotel reservations, all kinds of things.

Mr. MULTER. For which they get a fee.

Mr. KAUFMAN. I don't consider them a bank any longer from that particular point. I would like to see a bank operating as a bank.

Mr. MULTER. You think banks should sell insurance?

Mr. KAUFMAN. No, sir, I do not; because I have the same feeling, if I might say so, that there has to be a feeling of competency, and there has to be an investigation as to the ability of the person to pay for the insurance, and whether they are carrying the right type of insurance or not.

Mr. TALCOTT. Other than the insurance inherent in the credit card business, do you know of a bank that does sell any other kind of insurance?

Mr. STEARMAN. A suit was filed in Georgia not too long ago.

Mr. TALCOTT. And the outcome of the suit was—

Mr. STEARMAN. That has not been resolved yet.

Mr. MULTER. Here, too, the record should show that the National Banking Act limits the national banks from acting as insurance agents or brokers to those in towns of 5,000 or less. Yet under a ruling of the Comptroller, he has permitted them to do it wherever they please. Where they ask for permission he says it's perfectly all right, "You go ahead and sell the insurance." That is what brought about this particular lawsuit.

Mr. STEARMAN. That's correct.

Mr. MULTER. I hope when we get to the writing and marking up of one of these bills, we can say again in so many words we mean what we say in the statute—banks should be banks and not engage in general enterprise.

Mr. TALCOTT. If in a small town of, say 2,000, which could not sustain a full-time public stenographer, the bank permitted one of its

employees to be a public stenographer, would you have any objection to that kind of service by a bank?

Mr. KAUFMAN. Permitted one of its employees to be a public stenographer as such without the responsibility of the bank—sure, no problem. That person is taking the individual responsibility, fine.

Mr. TALCOTT. Well, acting as an employee of the bank.

Mr. KAUFMAN. This would be a question.

Mr. TALCOTT. Sitting out in the bank lobby and undertaking public stenography services which are not available any place else in the town or maybe not within 25 miles of the town.

Mr. MULTER. I think when you get to that kind of situation, we should consider giving the same kind of an exception as to all of these services that we do in the insurance business. In a small town, where there is only one bank, and there was no insurance broker, and no real estate broker, we said, "Look, the people of the community need the service, let somebody give them the service." If the only one who could give them this service was the only bank in town who happens to know this sort of business—let them have the service.

Mr. TALCOTT. Isn't this what happened generally in the travel service business too? A small bank was the only one that could provide travel checks and credit.

Mr. MULTER. I think, Mr. Talcott, this is exactly how it got started. When the big banks found this was a very profitable business, they have all gotten into the travel agency business and gotten into it to the point and extent where they were able to take the business away from the independent travel agency by telling the customer "Let us set up all your travel arrangements and we will lend you the money to do your traveling."

Mr. TALCOTT. And now there is some objection. If there is some way we could work out in our bill, a consideration for small towns, where there is a definite need for these services—can this be worked out in the bill?

Mr. MULTER. I think it must be.

Mr. KAUFMAN. Mr. Chairman, I could just terminate our testimony to you, as far as our official statement is concerned, with the fact that one of the things that we are most objecting to is the potentiality of a person being a captive of the bank—this so-called cradle-to-the-grave approach—where the bank controls the individuals—

Mr. TALCOTT. This is the way of life today. I can give you some more definitions more descriptive than "cradle to grave"—not only by the bank, the Federal Government. And almost everybody seems to like it.

Mr. KAUFMAN. It depends on how much the return is to them as to how well they like it.

Mr. ST GERMAIN. Mr. Chairman, I would like to ask a couple of questions here.

You have 11,000 members, you state. Am I correct in assuming that you have them in all 50 States?

Mr. KAUFMAN. Yes, sir; all 50 States and the territories, and the District of Columbia.

Mr. ST GERMAIN. Could you tell us how many banks are engaged in the accounting services that you feel are illegal, without super-

vision of accountants, as you have in Rhode Island, as against how many banks are engaged with?

Mr. KAUFMAN. I say about 95 percent of them.

Mr. STEARMAN. You mean nationwide?

Mr. KAUFMAN. Nationwide.

Mr. ST GERMAIN. Ninety-five percent of the national banks?

Mr. KAUFMAN. I would not want to be held to this particular figure.

Mr. ST GERMAIN. I think that would be rather important to the committee. In view of the fact that you do have members throughout the country, it would seem to me you might be able to give us your opinion as to what this situation is.

Mr. KAUFMAN. We would be glad to obtain this information.

(The information requested follows:)

COMPUTER INSTALLATIONS IN BANKS

Based on the best available information in March 1966, it is estimated that almost 25 percent of the member banks of the American Bankers Association offer computer services. Membership in the ABA as of March 1966 is approximately 18,300.

Those banks offering computer services have indicated that account reconciliation and payroll accounting are their most popular services.

About 24 percent of banks with computer installations provide accounts receivable processing; about 14 percent perform sales analyses.

Practically all banks offering computer services engage in what is generally acknowledged to be "accounting" services, as that term is defined in H.R. 10529.

Mr. ST GERMAIN. I notice, having read all of your testimony and some of the letters at the end, I might make this statement, Mr. Kaufman—as your particular representative. When statements come in, it's like letters going into the editor unsigned and not published. I don't know if we accept them, to be honest with you, unsigned letters, anonymous letters, such as we have at the end of this.

Mr. KAUFMAN. We would be glad—we have the original and will be glad to furnish them.

Mr. ST GERMAIN. Actually, I don't pay much attention to something unsigned.

Mr. KAUFMAN. We will be glad to furnish the original letters.

Mr. MULTER. Is there some reason these persons don't want their names on the public record?

Mr. STEARMAN. We thought perhaps it may have been better not to put their names on. We didn't check back with them, because we didn't have the time. But I have the original letters.

Mr. MULTER. I think you should check back with them. If they have an objection, give us their names and addresses for the——

Mr. KAUFMAN. We will resubmit the letters to you with the complete information.

Mr. MULTER. Let us know which of these letters we can put in our public record. If there are any that don't want their names on the record, furnish the names and addresses which will not be put on the record, but at least we can then know they are genuine letters.

Mr. STEARMAN. We would be glad to.

Mr. TALCOTT. I would like to have the names of two people. One is the national society member in California mentioned on page 12,

and the other is the national society member teaching at the class for bankers who thought he was teaching a bunch of lunkheads.

Mr. KAUFMAN. We will furnish those, too, sir.

May I thank the committee for allowing us to be heard. We appreciate the time you have given us.

Mr. MULTER. We appreciate your coming in. You have been helpful to us.

Please get the additional information to us as soon as you can, together with anything else that you may care to add to the record that may be prompted by any of the questions that have been asked.

Mr. KAUFMAN. Thank you very much.

Mr. MULTER. The committee will stand in recess until 10 o'clock tomorrow.

(The following information was subsequently submitted for the record:)

NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS,
Washington, D.C., March 10, 1966.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance, Banking and Currency Committee, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE MULTER: Enclosed are copies of three letters from NSPA members, which we would like to have inserted into the record of our testimony at yesterday's hearings on H.R. 10529. These are photocopies of the correspondence which was originally attached to, and made a part of, our written presentation. (The letters referred to were previously submitted and may be found beginning on p. 22.)

Also enclosed is a "position paper" which describes the purpose of H.R. 10529, and its several provisions. We would appreciate it if this "position paper" could also be included in the record, as part of the National Society's presentation.

On behalf of Martin Kaufman, the officers and members of the National Society of Public Accountants, I wish to express our appreciation and gratitude to you for your dedicated interest in the problem of banks encroaching into the public accounting field.

Your leadership is evidence of your deep concern over this problem and a keen desire on your part to have something constructive accomplished.

We believe the bills you have introduced, and the current hearings, will significantly aid our quest for a workable solution.

The National Society of Public Accountants share your feelings about this matter and we are anxious to do everything possible in cooperation with you to achieve a solution. You can count on our continued support.

Cordially,

STANLEY H. STEARMAN, *Staff Counsel.*

POSITION PAPER—PURPOSE AND ANALYSIS OF LEGISLATION TO PROHIBIT BANKS
FROM PERFORMING PROFESSIONAL ACCOUNTING SERVICES

Within the past several years there have been significant developments in the banking industry which forecast serious consequences for the business community and the professional practicing accountants of our country. The problem arises from the fact that banks in increasing numbers are advertising and rendering accounting, recordkeeping, and various tax services to business firms of all types and sizes, as well as to individuals.

Banks and other financial institutions have found it possible to offer these services because of their rather extensive investments in data processing and other automated recordkeeping equipment. This equipment is being acquired primarily to enable the individual banks to render more modern and efficient banking services to their customers and in many cases to other banks. But banks are using this equipment beyond their own needs to provide a type of service to the business community which is rather far removed from the traditional concept of banking.

Through various media banks are advertising that they are now in a position to offer a wide range of accounting and recordkeeping services. These activities may include, but by no means are limited to: payroll services, account reconciliation, cost accounting, billing, sales reports, inventory control, and even the preparation and filing of various tax returns. These services are described by the banks as "business services" to distinguish them from more traditional banking functions. However, these "business services" are the same type of services which have been and presently are being competently performed for the business community and the general public by independent, professionally trained practicing accountants.

These business services are not only outside the scope of normal and traditional banking functions, but, more importantly, they constitute a serious encroachment into the area of practice engaged in by professional accountants. If the present trend is permitted to continue without abatement or control and if banks are given a free hand to offer more and more variations of business services, there will be serious repercussions for the business community, the general public and the public accounting profession.

The proposed bill is designed simply to prohibit banks from performing professional accounting services for depositors, borrowers, or other customers. This prohibition would extend to such services whether performed by the bank at the going rate, for a nominal fee or on a gratuitous basis as an inducement to a present or prospective customer.

The proposed bill recognizes that when a bank occupies a position of trustee or agent, it must necessarily have the authority to provide a rather wide variety of services. The bill, therefore, makes no attempt to interfere in any way with activities necessary when the bank is acting as a trustee or agent, even if such activities or services include those prohibited by this legislation under other conditions.

The area of activities which the bill would restrict are those encompassed within the definition of "professional accounting services." These professional accounting services are defined in the bill in accordance with recognized terminology of the public accounting profession.

The bill would prohibit banks or associations, as described in the legislation, from performing any or all of the services which by definition constitute "professional accounting services."

The first group of activities included in the definition of "professional accounting services" is "the design, installation and supervision of internal systems of recordkeeping in terms of money or internal controls of financial data."

An important part of the many services rendered by persons trained in the field of accounting is the design and installation of an accounting system for a client. The accountant studies the nature of the business, determines the types of transactions that will probably occur, and plans or selects the necessary forms and records in which the transactions of the business may be recorded. Beyond that, as the business grows, it is the accountant's responsibility to review the accounting system from time to time, supervise the operations as an independent expert, and thereby initiate any desirable or necessary amplifications or modifications.

A key element in this area of accounting services is the fact that the internal systems of recordkeeping referred to are those expressed in terms of money or finances. Other basic recordkeeping systems which may involve physical goods or supplies not necessarily related to money or finances would not be included in the activities prohibited to banks by this legislation. Thus, a bank could use its data processing equipment in connection with the design of a system for a customer which has as its purpose the recording of raw materials or work in process in terms of units, rather than money.

A second area of services prohibited to banks under the proposed legislation would be the use of discretion in recording business transactions of a financial nature. This conforms substantially to the widely known and generally accepted definition of accounting as: "... the art of recording, classifying, and summarizing in a significant manner and in terms of money, transactions and events which are, in part at least, of a financial character, and interpreting the results thereof."

To merely record a business transaction as a mechanical function in a more or less routine manner is not at a level to which the bill is directed. Such activities are basic and preliminary to accounting and are best described as "bookkeeping."

Bookkeeping is an activity performed in accordance with established procedures with little or no room for the exercise of independent thought or control.

But professional accounting requires principally mental skills, including the exercise of discretion and judgment, rather than manual labor. When decisions must be made about a particular "bookkeeping" procedure or entry, the element of discretion necessarily follows. And the exercise of discretion in accounting—which recordings to make, when, in what amounts and to what accounts—are not decisions for banks to make. They are best left to those who are professional, qualified accountants.

A third category of professional accounting services which the bill would prohibit to banks is "the preparation of financial statements from books of account."

At regular intervals the professionally trained independent practicing accountant prepares statements showing the financial position of his client and the results of his client's operations. These financial statements are based upon the financial data accumulated in the accounting records. Such statements furnish important information to management, owners, investors, bankers, and government agencies.

The preparation of periodic financial statements, such as the familiar balance sheet or profit and loss statement, is a key service which only a professionally trained accountant is qualified to provide.

While a good recordkeeping system is vital to business health, records in and of themselves are valueless unless they can be properly analyzed to determine where a company has been, where it is now, and where it is likely to be heading. If the average businessman cannot obtain a proper evaluation of the message contained in his records, his accounting needs will hardly be served. All of the records in the world will do him no good unless he can rely with confidence on a professionally trained accountant to tell him what the records mean. And, it is only the bona fide accountant who is trained in financial statement preparation, **analysis, and evaluation.** Banks should not be permitted to offer or perform these professional services.

The proposed bill would also prohibit banks from the preparation of income tax returns, whether Federal, State, or local. This is an activity which is completely unrelated to banking because of its close relationship to accounting. In fact, it has been widely said that accounting records and accounting principles are the foundation upon which income tax returns are based.

While it is true that there is no present Federal regulation or control over those persons or firms who may prepare income tax returns for a taxpayer for a fee, it is believed that this is an activity which banks should not pursue. It is best that the public utilize the services of bona fide trained practitioners who are thoroughly familiar with the intricacies of Federal, State, and local tax law and the accompanying rules and regulations. It is necessary that the taxpayer—whether a businessman, corporation, or individual—have the right to look to his tax adviser for follow-up support and representation if such a need arises.

It is not the intention of this bill to restrict banks in any way from preparing estate, inheritance, or fiduciary tax returns or any other tax returns which are necessary in connection with lawful functions as trustee or agent.

Finally, this measure would prohibit banks from "the conduct of audits and the preparation of reports based on audits." Auditing is a procedure by which experts examine accounting records and statements to safeguard against fraud and error and to give assurance that the records and statements have been prepared in accordance with accepted accounting principles.

A professional accountant may make a continuous check of work performed by his client's bookkeeping or accounting department. This activity is generally described as an internal audit. In addition, a firm may call upon the services of an independent professional accountant to determine whether the financial statements present fairly the overall position of the business and the results of its operations. This assurance from the accountant is vital, not only to management, but to third parties, and particularly banks. Often an accountant is called upon to express a professional opinion in his audit report about the firm's operations as reflected in its financial records.

Auditing and the rendition of professional opinions are considered to be the highest level of public accounting practice. Considerable training and experience are required. At no time should banks attempt to render auditing

services. Such activities would be outside of the ability of bank employees, generally speaking. Moreover such efforts could be in conflict with the bank's overriding relationship with a customer or prospective customer where loans or other financial arrangements are involved.

This bill would apply to national banks, members of the Federal Reserve System, and those banks whose deposits are insured by the Federal Deposit Insurance Corporation. The administration and enforcement of this act would be conducted by the respective supervisory agencies.

This measure would also apply to Federal savings and loan associations, and to all other insured members of the Federal Savings and Loan Insurance Corporation.

Banks should not be allowed to perform professional accounting services for the business community. The best interests of individual customers, business firms, and the public accounting profession, and probably even the banks themselves, will not be protected if this trend continues.

The time is now appropriate for Congress to completely, thoroughly and vigorously investigate this entire matter and enact legislation to place reasonable restrictions on those "bank services" which definitely encroach into the field of the independent professionally trained practicing accountants of our country.

(Whereupon, at 12:05 p.m., the subcommittee adjourned to reconvene at 10 a.m., Thursday, March 10, 1966.)

TO PROHIBIT BANKS FROM PERFORMING CERTAIN NONBANKING SERVICES

THURSDAY, MARCH 10, 1966

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BANK SUPERVISION AND INSURANCE
OF THE COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 2220, Rayburn House Office Building, Hon. Abraham J. Multer (chairman of the subcommittee) presiding.

Present: Representatives Multer, Moorhead, Minish, Weltner, McGrath, Hansen, and Talcott.

Mr. MULTER. Good morning, gentlemen.

We will resume our hearings this morning on the bills and on the subject matter on which we started yesterday.

Our first witness this morning will be Mr. Cooper.

Come forward, Mr. Cooper, please, with anyone you care to bring to the witness table with you.

Mr. Cooper, will you introduce yourself, for the record, and also the gentleman with you, and then you may proceed.

You may read your statement, put it in the record in full, or you may summarize, as you wish.

**STATEMENT OF G. EDWARD COOPER, EXECUTIVE VICE PRESIDENT,
PHILADELPHIA NATIONAL BANK, APPEARING ON BEHALF OF
THE AMERICAN BANKERS ASSOCIATION; ACCOMPANIED BY
WILLIAM T. HEFFELFINGER, FEDERAL ADMINISTRATIVE AD-
VISER OF THE AMERICAN BANKERS ASSOCIATION**

Mr. COOPER. Mr. Chairman, and gentlemen, I am G. Edward Cooper, executive vice president of the Philadelphia National Bank, and with me is Mr. William T. Heffelfinger, Federal administrative adviser of the American Bankers Association.

I am appearing here today on behalf of the American Bankers Association in response to your invitation of March 4, 1966, to express our views on H.R. 112, H.R. 117, and H.R. 10529, bills which would impose restrictions on the types of services which federally insured banks may perform for their customers.

I would like to digress just a moment, Mr. Chairman, and point out that yesterday references were made several times to national banks and to the National Banking Act, but this legislation is designed, if approved, to affect all banks and savings and loan associations. We are talking about 13,500 banks, of which only 4,800 are national banks;

and even more significant, 10,000 of these 13,500 are under \$10 million in deposits; and maybe even more significant, about 7,000 of these banks are under \$5 million in deposits. So we have a very broad spectrum of banking to which we are addressing ourselves this morning.

As you may recall—

Mr. MULTER. Mr. Cooper, you have, as members of the American Bankers Association, both the large and small banks?

Mr. COOPER. Yes, sir; practically all are members.

As you may recall, Mr. Chairman, I represented the American Bankers Association in February 1964, when your subcommittee last held hearings on this subject. At that time I reviewed the reasons behind the association's opposition to H.R. 9548 and H.R. 9822, the bills then under consideration. Two of the bills now before you, H.R. 112 and H.R. 117, are identical to H.R. 9548 and H.R. 9822, the bills which the association opposed in 1964.

H.R. 10529, although similar in purpose, is not identical to the previously considered legislation. We feel, however, that it does contain substantially all of the objectionable features of the earlier bills. For this reason, the American Bankers Association expresses strong opposition to enactment of H.R. 10529, and reaffirms its opposition to the principles embodied in H.R. 112 and H.R. 117.

I will speak first to H.R. 112 and H.R. 10529, the bills directed toward restricting the types of so-called "accounting services" which banks may perform.

Under the provisions of H.R. 112, a federally insured bank would be prohibited from extending to its depositors, borrowers, or other customers any service, whether performed manually or by machine, which is not a "necessary incident" to the proper discharge of the banks' functions as a depository, lender, trustee or agent.

The provisions of H.R. 10529 would prohibit federally insured banks and savings and loan associations from performing certain "professional accounting services" for their customers except to the extent that such services are a "necessary incident" to the proper discharge of such an institution's functions while acting in the capacity of trustee or agent. The term "professional accounting services" as used in this bill includes:

1. The design, installation, and supervision of internal systems of recordkeeping in terms of money or internal controls of financial data;
2. The use of discretion in recording business transactions of a financial nature;
3. The preparation of financial statements from books of account;
4. The preparation of income tax returns, whether Federal, State, or local; or
5. The conduct of audits and the preparation of reports based on audits.

One of the four basic objections raised by the American Bankers Association in 1964 against enactment of H.R. 9548 was that the provisions of the bill were too broad and that it was virtually impossible to determine what types of established banking services were intended to be covered or would be affected. The association still objects to this lack of certainty and therefore opposes H.R. 112.

On the other hand, H.R. 10529 does attempt to specifically designate the types of services proscribed and thus reflects an effort to "tighten up" the earlier proposal. However, after a close examination of the terminology used to describe the types of services intended to be proscribed, it becomes readily apparent that problems of construction and interpretation are present in H.R. 10529. For instance, to what extent would banks which specialize in accounts receivable financing and which provide their business customers with accounts receivable recording, or which provide payroll services to corporations or other businesses through a series of bookkeeping transactions be affected by language such as that proposed in the bill? That language would proscribe "the design, installation, and supervision of internal systems of recordkeeping in terms of money or internal controls of financial data," or "the use of discretion in recording business transactions of a financial nature." Thus, although H.R. 10529 attempts to overcome the problem of uncertainty by specifically designating the types of services prohibited, we believe that problems of interpretation still exist, and therefore oppose enactment of this bill.

Even if we assume, however, that the problems of interpretation and construction could be resolved by a redrafting of the bills, the American Bankers Association would still oppose such legislation on principle because we feel that such legislation is an attempt to subject to statute that which presently is, and should remain, within the administrative jurisdiction of the Federal bank supervisory agencies.

In an economy such as ours, which is ever expanding and constantly subject to change, we must recognize that the needs and demands of the general public are also increasing. It is the purpose of the commercial banking industry to serve the financial needs, both individual and business, of the general public. Bank customers have traditionally sought additional and varied financial services from their local banks. In response to this demand, banks have through the years increased the various types of banking services available. Such increases in services, which in most instances seemed novel and incidental at first, have become an essential part of the banking business and have proven beneficial to bank customers and to the community. As long as these services are genuinely related to the banking needs of customers and are kept under surveillance by the supervisory authorities, we believe them to be an integral part of commercial banking.

Furthermore, the types of services performed by banks cannot be realistically viewed as "professional accounting services" because, in most instances, professional accountants do not engage in the kind of services performed by banks. Usually, the work that is now performed by banks was formerly performed by the bank customer's own bookkeeper or clerical employee.

I might digress here a moment, Mr. Chairman, and mention that in the past 2 years, since we last met, there has been an increasing trend of requirements and demands by customers for new services in banks, and additional services, and in most instances, for example, specifically in talking about our own area, we now have a number of payroll accounts from small or medium sized businesses, and in almost every instance the original arrangements are made not only by the businessman but by his accountant with the bank to perform this service.

In view of this, we feel that the area of banking services should not be restricted or limited by legislation of the type proposed by H.R. 112,

and H.R. 10529, but rather should be left within the administrative jurisdiction of the Federal bank supervisory agencies.

Another aspect of the proposed legislation that must be considered is its probable adverse effects on existing correspondent banking relationships. Most of the Nation's 10,000 smaller banks are unit institutions serving rural areas and small towns. In order to provide local bank customers with complete banking services, many of these smaller banks must obtain a variety of services from their larger city correspondent banks. Such services include bookkeeping and record-keeping for demand deposit accounts, savings accounts, mortgage servicing, installment loan accounting, etc.

Enactment of the proposed legislation could conceivably prohibit such correspondent banks from performing such services for the smaller banks. The effect of such a prohibition would be that the smaller banks could no longer perform full banking services for their customers. It seems highly questionable to us that the longstanding and essential business relationships that exist through correspondent banking should be jeopardized. Yet, such would be the effect if the proposed legislation were enacted.

I might mention here, too, Mr. Chairman, that a service that is provided by correspondent banks to many of the country banks, both small and medium sized banks, is that of the design and installation of systems which would be expressly included under the professional accounting definition in this bill.

Finally, another factor that must be considered with respect to this legislation is the effect it would have on the future availability of the most modern and complete services for bank customers. During the past several years the development and utilization by banks of electronic data processing equipment has led to the availability of an ever-increasing number of banking services. Due to the tremendous capital expenditures incurred in the purchase or lease of such equipment and the fact that the equipment can only be effectively used when operated reasonably close to full capacity, it is natural to assume that many banks obtain it only on the premise that they will be able to provide customers with more and varied banking services.

The proposed legislation, which restricts or handicaps banks in the performance of services for customers, would deter banks from making large capital outlays to acquire such equipment, if they thought they would be faced with the possibility of not being able to utilize the equipment to perform services desired or required by customers. The ultimate effect of such a postponement would be to deprive bank customers as well as the community of the most modern and complete banking services that otherwise would have been available to them.

While we realize that in some instances the services performed by banks are also performed by other types of business concerns, we cannot understand why banks should be prohibited from performing services for their customers relative to banking functions.

With respect to the provision which excepts services rendered for certain customers, H.R. 10529 is even more onerous than H.R. 112. Under the terms of H.R. 112, a bank could perform the proscribed services when they are a necessary incident to the proper discharge of the lawful functions of such institution acting "as a depository, lender, trustee, or agent." H.R. 10529 narrows this exception so that banks could only perform the proscribed services that are a necessary

incident to the proper discharge of functions while acting "as a trustee or agent."

In view of these considerations, the American Bankers Association strongly recommends against enactment of H.R. 112 and H.R. 10529.

The third bill, H.R. 117, if enacted, would prohibit any federally insured bank from entering directly into the leasing of personal property as the owner or lessor of such property. The provisions of this bill are identical to those contained in H.R. 9822 which the ABA opposed in 1964, and we once again respectfully recommend against the adoption of this legislation.

Our reasons for opposing enactment of H.R. 117 are substantially the same as those raised in opposition to H.R. 112 and H.R. 10529. The American Bankers Association views the area of banking services as one that cannot and should not be subjected to rigid statutory standards. We believe it is far wiser to permit the Federal bank supervisory agencies to retain exclusive jurisdiction over banking services and leave the authority to deal with any such problems that may arise in the agencies through their administrative and regulatory powers. This will permit the agencies to expand bank services and thus fulfill the needs of the community and at the same time curb any such services or activities which they feel are imprudent or unsafe for banks to render.

The direct leasing method of financing or the "financial lease" is a relatively new development in the field of credit financing. Banks, until recently, had confined their involvement in equipment leasing to the financing of equipment leased by a bank customer from a leasing company or the making of loans directly to such leasing companies.

In 1963, the Comptroller of the Currency asked his advisory committee to study the question of banks engaging in direct leasing activities. This advisory committee determined that industry now felt that leasing, in certain instances, was more advantageous than purchasing, and recommended to the Comptroller that national banks be permitted to make direct leases of personal property to customers when requested to do so by such customers. The Comptroller then issued a ruling based on the committee recommendation permitting national banks to engage in direct leasing activities.

Mr. Chairman, 2 years ago and just of recent date, the States of Missouri, Pennsylvania, and Oklahoma have passed legislation permitting State banks to engage in lease financing, and the State of Illinois has also passed such legislation, which is subject to ratification by the electorate on the next election date. So, in effect, three States have now similar legislation and one more is on the doorstep.

It must be clearly borne in mind that this ruling of the Comptroller does not grant national banks unlimited authority to engage in all types of leases of personal property, but is restricted to only those instances in which a bank customer makes a specific request of the bank to lease him a specific item of personal property. The authority or power thus given is not a general merchandising power since national banks may not purchase equipment or commodities for stock and hold them for future sale or lease, but is clearly and entirely a financing power.

Although leasing companies object to banks entering into the direct leasing field, in many instances the types of equipment desired

to be leased could not be obtained from any leasing company in operation today. A recent example is the syndicated leasing of airframes by several banks to United Air Lines.

The American Bankers Association concurs in the view of the Comptroller of the Currency, and with the several States that have enacted such legislation, that direct leasing is a bona fide financial service which commercial banks should be permitted to provide in response to the credit needs of their customers.

Thus, the American Bankers Association urges against the enactment of H.R. 117.

If I may continue, Mr. Chairman, for a few moments with a few comments that arose as a result of discussions yesterday, and one I think in which Mr. Talcott was particularly interested, reference was made to the faculty of the American Institute of Banking in California and of the very poor record of the class. A suggestion was made that the public would not want accountants or those serving as accountants who had not successfully passed the courses, and 13, I believe, of 30 he listed as dropouts.

The American Institute of Banking is a rather novel and unique organization. It is the largest adult educational effort in the world. There are 200,000 members of the institute. There are at least approximately 100,000 each year that go through these various classes of instruction on accounting.

Mr. MULTER. You would not call those captive classes, would you?

Mr. COOPER. No, sir. This is a mixture. My point is, Mr. Chairman, that the faculty of these classes throughout the country is not limited to bankers. I went through these accounting courses—

Mr. MULTER. I am referring to bank employees. They are instructed by their employers to take these courses, are they not?

Mr. COOPER. Instructed by their employers?

Mr. MULTER. Yes.

Mr. COOPER. They are encouraged by their employers, and the employers will—

Mr. MULTER. I will take your word "encouraged," but I am sure you will agree with me that if an employee didn't take that encouragement, he wouldn't last very long in the bank.

Mr. COOPER. No, sir; I would not agree with that.

Mr. MULTER. Is this the right expression—that the employer encourages his employees to go to school rather than directs?

Mr. COOPER. Yes, encouraging—

Mr. MULTER. Encouraging, but not coercing; there is a difference.

Mr. COOPER. Mr. Chairman, I will have to take exception there, because this is not coercion, this is a voluntary move, and generally limited to those coming out of high schools. At the same time, the banks, as part of their training and development program—encouraging—

Mr. MULTER. Do you consider a high school graduate an adult?

Mr. COOPER. In these days, yes, sir; close to it.

Mr. MULTER. In my day, they were graduated at 16, 17, or 18, from high school, and you never considered those graduates adults. Maybe they are graduating now in the twenties instead of the teens.

Mr. COOPER. By the time they are completing these courses, they are adults. This takes a few years.

Now, along with the encouragement by the AIB, there is also the encouragement to enroll in universities, colleges, training in the area, so it is one part of a diversified training program.

Mr. MULTER. Don't misunderstand me. I think these training courses are excellent and they are rendering a good public service as well as a service to the banking fraternity.

Mr. COOPER. I wanted to be sure that you understood the faculties, the men that were represented on the faculties, because, if I may say so, I think you and I discussed last time some items of long standing. I have been in the banking business, with the same bank, for 41 years now, and in the early years I was——

Mr. MULTER. I was smarter than you. I got out of bank employment very early.

Mr. COOPER. I went through these classes and, in all my experience, the accounting class was always conducted by accountants, as are some of the evening schools of the colleges and universities in our area.

I think this was an unfortunate situation in California, but whether the dropouts were part of the normal turnover in the bank, which is high these days, or whether they were not capable of mastering it, of course, it is not designed to make them accountants, it is designed to have them have a better grasp and understanding of accounting rules and regulations.

There was discussed yesterday also the matter of recordkeeping and bookkeeping, and an illustration was used of a problem of putting an advertising expense under contributions. These classifications are usually made by the businessman himself or by his accountant, and it was interesting, just this morning, in this morning's issue of the American Banker, that in Nevada, Iowa, the Nevada National Bank, a bank of \$71½ million of deposits, is written up here as a bank that performs a very important recordkeeping service for the farmers in its area. As the farmers issue their checks, there is provision on the checks for coding the type of expense, and there is also a provision for coding the income on the deposit tickets, and the bank accumulates these and sends back to the farmer his records of classification of income and expense.

They say this has been a very helpful service to their farm customers, and particularly to the wives of the farmers who have been keeping the books heretofore. Now she no longer has to rely on check stubs, receipts, memos, and other papers to supply the information to those who make up the income tax return.

If you would like to have a copy of this for the record, we will be glad to have it made a part of the record.

Mr. MULTER. We will make that article part of the record.

(The article referred to follows:)

[From the American Banker, Mar. 9, 1966]

NEVADA NATIONAL USING CODING SYSTEM, COMPUTER FOR AGRICULTURAL RECORDS

(Special to the American Banker)

NEVADA, IOWA.—Nevada National Bank is offering agricultural customers a recordkeeping system that is, in effect, a byproduct of its normal check-clearance operation.

The \$8-million-plus deposit institution keeps track of 65 farmers' records through the easiest method of computer input—their checking accounts—and does the recordkeeping through its computer center.

With this system—trademarked and copyrighted as “Rec-Chek” by Nevada National—detailed income and expense business records are guaranteed to farmers for tax and credit purposes and to help them make more soundly based financial decisions.

Key to the program is a three-digit numeric code developed by the bank to designate more than 40 standard and variable income and expense categories. For the farmer, these categories range from breeding fees and veterinary services to machinery maintenance and retirement plans, from conservation and feed purchases to freight and trucking fees.

Nevada National supplies to farmers special checks and deposit slips which carry on their faces a box for the farmer to enter in pen the three-digit code which denotes the expense or income category the transaction signifies.

For example, a farmer writing a check to pay for cattle would enter the three-digit 309 in the small box on the check and present it to the seller. Similarly, a farmer receiving a check from a buyer would deposit that check to his account, and insert the income category number on his deposit slip.

CATEGORY DESCRIPTIONS

Category descriptions and code numbers are printed on a form attached to the reverse side of the check or deposit slip to make it easy for the user to enter the correct code number.

When the farmer's check clears Nevada National, a tab card is key-punched in the data center for each check and deposit slip received, showing the customer number, category number, and amount.

These transactions are processed daily and the totals are entered into the magnetic disk information files of the bank's IBM 1440 computer for record purposes.

Later, in accordance with regular monthly statement cycles, a monthly statement is sent to the farmer as well as a detailed report which lists:

All check transactions by category number made during the month, with cumulative total if there is more than one purchase in a given category, as well as a total at the bottom of the column for all farm business check-written.

All checks and money deposited during the month, bearing category numbers which reflect the source of income.

Total for the year to date of all expenses (checks written).

Total for the year to date of all farm income (deposits).

Those checks written by the farmer which do not pertain to operation of the farm business, but are personal checks, are left uncoded. They are processed in the normal flow of business and entered on the monthly printout page on a separate portion of the sheet.

“In essence, the system is a byproduct of standard checking account processing,” according to Sam B. McHose, chairman of the bank. “Information essential to good financial records has always been inherent in checks and deposit slips. Now we break that information out into precise categories of income and expenses through our coding setup.

“Even more important,” claims Mr. McHose, “is the removal of the major stumbling block to a good recordkeeping system—getting the details of income and expense on paper right at the same source.

“Most people lack the discipline or time for the paperwork good records require. Our system keeps track of the customer's income and expense through the easiest method of paperwork input—his checking account—and our computer handles the recordkeeping for him.”

Mr. McHose reports the system has helped farm customers considerably—and proved a boon to their wives, who keep their books. She no longer has to rely on check stubs, receipts, memos, and other paperwork, or memory, in furnishing information for tax services.

In addition, Mr. McHose notes, as a banker he has a better idea of what kind of operator the farmer is who subscribes to the service. The banker now has adequate records to base credit decisions, and the farmer more accurately can develop budget projections and keep within budgets by seeing what he has been doing.

JOHN FARMER
R R 2
ANYFARM, USA

REC - CHEK
TM

AGRICULTURAL
SYSTEM OF RECORD KEEPING
by the

NEVADA NATIONAL BANK, Nevada, Iowa

PERIOD
09 30
MO YR

INVENTORY
14 693 00

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CODE	CATEGORIES	MONTHLY EXPENSES	MONTHLY INCOME	YEAR-TO-DATE EXPENSES	YEAR-TO-DATE INCOME	COMMENTS
301	Ag. Program Payments	46.00	876.15		2542.15	
303	Breeding Fees	46.00		46.00		
305	Car Expense	14.00		56.50		
307	Cash Rent					
309	Cattle Purchased					
311	Cattle Raised					
313	Conservation Expense			3.57		
315	Corn		3325.00		4325.00	
317	Custom Work	79.75		127.75		
319	Dairy Products					
321	Eggs					
323	Feed Purchased			769.01		
325	Fert. and Lime	903.79		903.79		
327	Freight and Trucking					
329	Gas, Fuel, and Oil					
331	Hay and Straw	21.00		115.00		
	TOTALS	1786.57	5546.65	7381.09	14953.64	
391						
393						
395	Capital Investment	650.00		2620.00	5.00	
397	Mortgages and Notes			1700.00	1200.00	
399	Non-Farm Items	100.75	530.00	2809.51		
	TOTALS	750.75	530.00	7128.51	1205.00	

Portion of sample monthly statement of Nevada (Iowa) National Bank's "Rec-Chek" agricultural record-keeping system lists for farm customer all income and expense items, both for the month and year to date. Customer receives this statement each month as a printout from the bank's data processing system which uses as information input farmer's specially coded checks or deposit slips.

Below, sample of check supplied to farmers which carries on its face a box where the farmer can enter the three-digit code which denotes the expense category. Category descriptions and code numbers are printed on a form attached to reverse side of the check for customer's reference.

ROBERT A. TAYLOR
123 OAK
ANYWHERE, U. S. A.

REC - CHEK
TM
AGRICULTURAL RECORD SYSTEM

300
72-535
713

19

PAY TO THE ORDER OF _____ \$ _____

DOLLARS

PEOPLES STATE BANK
ANYWHERE, U. S. A.

|||

⑆0713⑆0372⑆ 01 234 5⑈

In pointing to the need for such a service, Kermit J. Anderson, president of Nevada National and a farm owner himself, notes, "As the major farm input changes from labor to capital and production and investment risk factors increase, the farmer's recordkeeping needs become increasingly sophisticated.

"Today's farmer is a businessman and a manager of substantial capital," Mr. Anderson says. "He needs good business records for tax credit purpose and to help him make better decisions. For example, he has to keep track of all his production sales records and all his purchase sales, and he needs accurate cost and income data on the various farm enterprises."

The bank launched this program on a pilot basis last year after 16 months preparation during which it consulted with specialists of International Business Machines Corp. and the Internal Revenue Service, asking for their help in

sharpening the information required for good tax returns. Since that time the bank also has expanded this service to cover small businessman and personal accounts.

Using the program are some 60 operators representing drug stores, beauty shops, cafes, restaurants, a water softener company, and a number of personal service businesses.

The business user establishes the income and expense categories he needs for financial control of the business and these are given code numbers by the bank. In addition to the regular bank statement, the businessman gets a monthly report showing totals of income and expense by his own categories, plus year-to-date figures and a percentage figure for each category of expense and income against the total. He also gets the transaction summary sheet which helps him identify items needed for tax reports.

The personal account program contributes to budget control for the housewife and maintenance of better records for income tax purposes. On the monthly report the individual account has a separate breakdown of all deductible expenses for the month and the cumulative totals and a summation of all income.

In addition to charging regular service charges on checking account transactions, the bank, for the recordkeeping service charges \$4.50 a month for the farm program, \$1.50 per month for personal accounts, and \$6 per month for a business account.

Nevada National also is franchising its "rec-chek" program for use by other banks and by data processing centers serving banks. Cost is based on potential number of customers that a bank serves. The franchise package, now being implemented by four banks in Iowa and with about seven others set to go on, includes programing for use on either punched-card or electronic data processing equipment, related forms, promotion and merchandising materials and customer education materials.

Mr. McHose says he has had inquiries about the program from banks throughout the country and expects that "10 years from now this system will become the standard for bank statements everywhere."

Nevada National installed IBM punched-card equipment in 1964 which was replaced by the IBM 1440 system in January this year. The bank has automated its demand deposit and savings operations, and by spring expects to have all loans on the computer.

Mr. MULTER. How many banks are serving that community? This is an Iowa community; is it not?

Mr. COOPER. I can't tell for sure. There is one other bank in that same community.

Mr. MULTER. Are the other banks rendering that same service?

Mr. COOPER. Not to my knowledge. I wouldn't know.

Mr. MULTER. How long will it be before they are compelled to get into rendering the same service in order to meet the competition of this bank?

Mr. COOPER. Soon, if they are affected.

There is a bank in New Jersey that has been doing this for years for businessmen in the same town, and the other bank has never started it. They never felt required to do so.

Mr. MULTER. What banking community are you talking about in New Jersey?

Mr. COOPER. Princeton.

Mr. MULTER. What is the name of the bank?

Mr. COOPER. The Princeton Bank & Trust Co.

Mr. MULTER. How many banks are there in Princeton?

Mr. COOPER. Two.

Mr. MULTER. How many accountants are there in Princeton?

Mr. COOPER. I don't know.

Mr. MULTER. How many accountants are there in Nevada, in this community served by this national bank?

Mr. COOPER. I don't know.

Mr. MULTER. The town of Nevada is in the State of Iowa?

Mr. COOPER. Yes.

Mr. MINISH. Doesn't this put the other banks at a distinct disadvantage with the bank that is rendering the services?

Mr. COOPER. It is no different than it would be with any other type of banking service. If one bank would initiate and render it, and another bank did not pick it up.

Mr. MINISH. If a small employer in that particular area is going to one of the banks that doesn't have the service, do you think he is going to continue to do business with this bank, whereas if he goes to the other bank and banks his money, he gets these additional services?

Mr. COOPER. If his bank does not provide them, and he is willing to pay for it, I would say he would change.

Mr. MINISH. So it does offer an advantage.

Mr. COOPER. That is part of the free enterprise system, as well as the bank business.

Mr. MINISH. But it does give them an advantage——

Mr. COOPER. Surely.

Mr. MINISH. If it didn't, the banks wouldn't offer these services.

Mr. COOPER. Definitely. But it becomes a byproduct of the handling of a checking account.

Mr. MULTER. Is this Nevada National Bank in Iowa charging its customers for this accounting service?

Mr. COOPER. I didn't notice any price schedule in the article, Mr. Chairman, but I would be sure that they were being compensated in some form for it.

Mr. TALCOTT. Can a customer take advantage of this bookkeeping service without being a depositor of the bank?

Mr. COOPER. Not in this case, because it is a byproduct of the handling of their checking account.

Mr. MULTER. In other words, if a customer comes in and wants the accounting service, he is told, "Well, come back as a depositor and we will give you the accounting service?"

Mr. COOPER. It is a byproduct of the service; yes, sir. But you can get it——

Mr. MULTER. By the same token, the man who is in the bank where he is getting the accounting service will have a tough time taking his account to one of the other banks that is not rendering this service.

Mr. COOPER. Not necessarily, sir.

Mr. MULTER. Do you suppose the bank that is rendering the service and has the account is very readily going to cooperate and say, "Here are all your records. Now take them over to our competitor across the street, who is not giving you accounting services. Here are your accounting records. Take them back, go ahead and make your own return, your own arrangements." They are going to cooperate very freely in giving his records back, aren't they?

Mr. COOPER. He has the records. He has them every month. He has his reports.

Mr. MULTER. What is the bank doing for him?

Mr. COOPER. The bank is giving him and, for the use of their tax consultant, and the tax consultant could be the local accountant, it is

giving him a classification of income and expense which facilitates the preparation of their tax returns.

Mr. MULTER. How do they classify his earnings and expenses?

Mr. COOPER. How do they?

Mr. MULTER. Yes. How do they classify these items? A man draws a check to John Jones for a hundred dollars. How do they classify it?

Mr. COOPER. The check is indicated with a code number that is set up in advance, and the farmer marks the code number. He knows the purpose for which the check was issued, and he has a schedule of the accounts, so he marks the number.

Mr. MULTER. He has an account number for oil, another for gasoline, another for electricity, another one for power, gas, and so on down the line, and another one for contributions?

Mr. COOPER. Yes, sir.

Mr. TALCOTT. His accountant has it set up that way.

Mr. COOPER. Gas, oil, fuel oil, account 329; hay and straw, 331.

Mr. MULTER. You mean he has 331 or more numbers?

Mr. COOPER. Oh, no.

Mr. MULTER. What are the numbers you are talking about?

Mr. COOPER. They started with 301, and it runs down to 399 on this schedule.

Mr. MULTER. It has 99 different numbers which he must put upon his check to indicate what the check is being drawn for?

Mr. COOPER. Only one, but he has to do the same thing at the end of the year in preparing his statement or in preparing his income-tax return.

Mr. MULTER. He makes a notation by a number on the stub of what it is for.

Mr. COOPER. Would you rather go back over all of your stubs for a year and pick these up, or would you rather have a listing here of them?

Mr. MULTER. The farmer's wife is going to have in front of her a list of 99 items, there are 99 numbers, and as they draw each check they are going to look at this list and put down an appropriate number?

Mr. TALCOTT. That would be the easiest way to do it.

Mr. COOPER. Sure, simplified bookkeeping.

Mr. HANSEN. Will the chairman yield?

Mr. MULTER. Yes.

Mr. HANSEN. I am perhaps a little more acquainted with what goes on out in the rural areas than the rest of you. The question was asked here a bit ago as to the number of accountants in a town such as Nevada, Iowa. I would say there are no accountants in Nevada, Iowa. It is the typical rural town. Most of the income-tax returns that are developed in a community of that kind, and this is true of my own community of Manning, a town of a little under 2,000, are performed by fellows who are lawyers, insurance agents, and real estate men. They go to an income-tax school once a year that is held in the State capital to get the new rules and regulations, and they perform these services of preparing income taxes for their rural customers. Most of the farmers come in with a hip pocket full of envelopes and scratch paper that in many cases their wives have worked up for them.

They have been working toward a sort of uniform recordkeeping system for these farm folk through the extension department over at Iowa State University in Ames.

The requirements for recordkeeping have become quite complex, so much as that the average farmer has not been able to give the tax consultant, not his accountant, but his tax consultant, the kind of information he really needs with which to perform a proper service. So, with the arrival of automated equipment it becomes possible and feasible for someone like a banking institution that is financially capable of investing the amount of money required to make such an installation. I think bankers in many cases have been urged and encouraged by the people who have been making these income-tax returns to establish this kind of service. Moreover, it goes deeper than that.

The State of Iowa, for example, in the conduct of its business, has entered into the same kind of an arrangement with the three large banks in Des Moines and they rotate the accounts. Each bank handles the job for 5 months during the year. There are several million dollars involved in a floating account, so to speak, which the banks, of course, cherish having. They don't have this account when they are not performing the accounting service through their computer centers, except for the 5 months each year. The reason they are rotating the service on a 5-month basis is so that the seasonable aspects of the proposition are leavened or spread out among the three central banks in Des Moines.

I don't see that it is sinful, myself, or that it is an encroachment on private enterprise for a bank which is disposed to and capable of establishing this sort of a service in its community to do so for the benefit of the customers and the people, the farmers and businessmen in that area, particularly since I am certain that most of this has been established through suggestions and urging on the part of the people who finally pull these figures together and make up the income-tax figures.

Now, as to the account numbers, this is all a code proposition that is used, so that it is easy to differentiate between the purchase of material on a farm which goes into a feeding operation, for example, or goes into something for the development of the soil; or goes into something for his equipment account and his repair account, and so forth. And I think this simplifies the problem for the farmer.

As Mr. Cooper said, the farm women are the ones who had the major burden of keeping these records for their men, because the men are usually busy out in the field from dawn to dusk.

I hope that might clarify a little bit—a little, just a little, about the setting behind this sort of development in the rural areas.

MR. MULTER. Mr. Hansen, I think that statement will be of tremendous help to us. You obviously know that those of us who come from larger communities do not understand the problems of the smaller communities and sometimes those in the smaller communities misunderstand those in the larger communities.

How large a population is there in Nevada?

MR. HANSEN. Nevada is somewhere between 3,000 and 4,000, as I recall it. It is a county seat town.

MR. TALCOTT. Mr. Chairman.

Mr. MULTER. Yes, Mr. Talcott.

Mr. TALCOTT. I would like to ask a question, perhaps of the chairman more than the witness.

It seems to me this question is neither black nor white.

Mr. MULTER. Obviously not.

Mr. TALCOTT. It is not easily reducible to statute, especially Federal statute. In my area some of the accountants are almost joyous over the opportunity of having all this grist, this legwork, all the mechanical bookkeeping information supplied for them, so that they can devote themselves to professional accounting.

It seems to me the key for which we are searching is, how we can prohibit banks from performing professional accounting work, and yet permit them to furnish the basic bookkeeping information the people desperately need. This is what I think we should be aiming for in this legislation.

Mr. MULTER. Quite right, Mr. Talcott. That is the reason why H.R. 112 was introduced, which followed the language of the bill on which we had a hearing in the last session. I then introduced, by request, H.R. 10529, because I was told by the accountants association was worked out by them and some people in the banking business in order to meet some of the objections of the banking fraternity.

There is not any doubt, nobody wants to stop the banks from rendering banking services. There is objection, however, to the rendering of nonbanking services, and I think what we have got to do in this committee, after we get all of the evidence, is to see if we cannot work up appropriate language that is not going to deprive the banks from rendering a full banking service, and yet at the same time keep them out of the business of other professions and of other businesses.

We want to the fullest extent possible to promote the free enterprise system, but having in mind that we have always limited banks to banking, and insurance to insurance companies, these are regulated companies, just as we keep the railroads to the fullest extent possible to running railroads, although today the trend seems to be to diversify rather than stay in their own field, for which they have a specific monopoly or charter. I think that is the problem we are confronted with here, to see, after we have heard all the testimony, what we can work out by way of appropriate language, so that the public will be better served and at the same time, nobody hurt.

Mr. HANSEN. Mr. Chairman.

Mr. MULTER. Yes.

Mr. HANSEN. Will the chairman yield?

Mr. MULTER. Yes.

Mr. HANSEN. I think your statement is quite right, Mr. Chairman. There are some areas that are covered in this proposal that I think should have attention. I imagine it is going to be somewhat difficult to determine where the line should be drawn.

Now, I know from my experience with bankers in the rural areas, and with the people who are interested in what they are doing, as competitors, there is some deep concern being expressed by fellows in the travel agency business, for example. There have been banks that delved into that, and they have of course gone ahead and financed the travel trips which the other travel agents in the area probably were not able to do.

Then there is always the question about the general insurance agency situation and the life insurance agency situation and the real estate brokership.

Now, these questions and problems are covered in various ways by various States, but I am a believer in the idea that this sort of thing should be developed on a more uniform basis than has yet existed, and it will be an attempt at least to arrive at a situation where we don't have quite the conflict that seems to prevail between the supervisory agencies of the various banking systems in the country.

Mr. MULTER. May I—

Mr. HANSEN. That's fine. Go ahead. I'm finished.

Mr. MULTER. I was about to say that when the National Banking Act was written, the authors and the Congress took into account the fact that you had various areas, particularly in smaller communities, that could not get services that the larger communities were getting, and particularly with reference to insurance. They wrote into the act a provision that in a community of 5,000 or less the bank could render the insurance service, because there was no one in those communities to do it, and we were not going to deprive the community of the services that they needed.

I think we have to have that in mind here, too, in those areas where these services are unavailable to a community. We are not going to deprive a community of a service because the bank is the only one that can render it for them. I think there is a middle ground that we must work out, and frankly I was very hopeful that the American Bankers Association would help us on this, instead of taking the position, as you have, Mr. Cooper, of saying that, "We are opposed to the bills, we are opposed to H.R. 112, H.R. 10529, and opposed to anything that is going to restrict us. Leave it to the administrative agency," is what you say.

The American Bankers Association never hesitated to come in here and ask for legislation when you didn't like the rulings of the administrative agency, isn't that so?

Mr. COOPER. Partially.

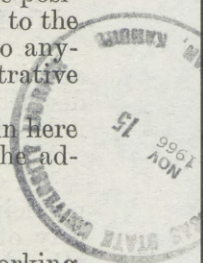
Mr. MULTER. You came in here and asked for relief—

Mr. COOPER. Mr. Chairman, I would like to suggest, we are working with the supervisory agencies on a number of matters, and of recent date the disclosure regulations under the SEC, which work Congress enacted, there has been very active cooperation, not only with the supervisory agencies, but accounting groups, and next week we have a meeting in New York between the three groups. So you might say that is both progressive and constructive.

Mr. MULTER. This cooperation we have long sought. The fact of the matter is, the cooperation now is coming from the banking fraternity with the supervisory agencies on disclosure regulations only as the result of bank bills that have been introduced in Congress to require the disclosure.

Now, you talked about it originally, and you opposed originally any such legislation. I think you still oppose any legislation that tells you what you must disclose, but you are getting to the point where you are trying to work it out with the agencies.

There are many things done by the supervisory authorities that many people don't think they have the authority to regulate. You



came in here and urged that we enact legislation, as a result of which we permitted banks to buy stock in corporations which would render a computer service to them.

We wrote into the bill, into the law, precise and exact language providing that the corporation could not sell this service to anyone except banks.

I went along with the legislation, and I'll tell you, if I knew then what has happened since, I would have opposed it. However, I went along with it, and against those who said, "Now, look, the first thing you know you will let them do this, and then they are going to be selling the service to the general public."

The record is here, and ABA and other bank representatives said, "If you let us do this through cooperative corporations we will not sell these services to anyone except to the banks, we will render the service only to the banks and not to the general public." And today the banks are selling the service to the general public.

Mr. COOPER. May I suggest, Mr. Chairman, that maybe that is a misunderstanding. The Bank Service Corp. is a group of banks and the bill provides that that service corporation may render services to only those that are members—

Mr. MULTER. What?

Mr. COOPER. Not to the general public.

Mr. MULTER. Why shouldn't it render it to the general public?

Mr. COOPER. It is not necessary.

May I make an analogy, it may be a poor one, but I will try.

The Federal Reserve System is divided into 12 districts.

Mr. MULTER. Yes.

Mr. COOPER. There is a Federal Reserve bank in each of the 12 districts that serves the banks in that district, and any one of the 12 districts is serviced only by the member bank within its district, and it does not go beyond them to the general public.

Mr. MULTER. But this is a central bank service.

Mr. COOPER. This is a bank service corporation in which those who participate as members can turn to for services which they, as a bank, may offer. For instance, we discussed Nevada, Iowa, here. If the other bank in the town wanted to join in on a bank service corporation enterprise and through stockholdings or ownership or some means of participation they could offer any of these services to their customers, and turn around and have their service corporation do the processing, it is no different than we, as a correspondent bank, are now providing computer services for a great number of country banks. They do not feel they can afford their own.

Mr. MULTER. Rendering the computer service to the general public—

Mr. COOPER. Sir, they are—

Mr. MULTER. The banks own this computer and are selling the services to correspondent banks. Are they also selling the computer service to the general public?

Mr. COOPER. The correspondent bank is, sure.

Mr. MULTER. You say the large bank owns the computer and is selling the computer services to correspondent banks?

Mr. COOPER. Right.

Mr. MULTER. Are they that own the computers selling the service to the public as well as to the banks?

Mr. COOPER. Within their own trade areas.

Mr. MULTER. They are within their own trade area?

Mr. COOPER. For example, we have a payroll service. A number of corporations in our area use it, but there is a bank 150 miles away from us that has sold the service to one of its customers. We do the processing for them, but we are in the back room, we don't make any contact with this bank's customer, we provide the smaller bank with the facilities to meet the requirement of the general public.

Mr. MULTER. We enacted that statute on the representation that was made to this committee and to the Congress, that the banks would set up a bank service corporation that would be for banks and only for banks.

Mr. COOPER. That is right.

Mr. MULTER. And now a bank can own its own computer service, sell its service to the general public, and when a bank sells the service to other correspondent banks, that correspondent bank will sell it to the people in its community.

Mr. COOPER. Surely, that is part of the banking service.

Mr. MULTER. Why did you come to the Congress for that kind of statute in the first place?

Mr. COOPER. The banking service corporation?

Mr. MULTER. Yes.

Mr. COOPER. This provides a smaller bank with an opportunity to have available to itself computer services that they cannot afford.

Mr. MULTER. It also lets them sell to the general public, and also lets the big bank that owns the computer service sell to the general public.

Mr. COOPER. Surely.

Mr. MULTER. Why did you need the statute?

Mr. COOPER. Banks such as mine which had their own computer did not need statutory authority to sell computer services to our correspondents.

Mr. MULTER. Who asked for it, do you know?

Mr. HEFFELFINGER. I think the smaller banks who could not afford their own; that is, to buy their own computers, knew that by joining together with other small banks that they could form a computer service corporation, and do work for each of the banks concerned in the joint venture, but it is only for the bank customers that they do this, each bank for its own customer may feed the business into the joint center, and it is fed back to the bank.

Mr. MULTER. The fact of the matter is, the regulatory authorities wouldn't give the banks the right to do it, and you needed the statute, and it was the big banks who could buy these computers that wanted the authority so they could sell the services to other banks, and got the statute on the misrepresentation that they would not sell to the general public, but only to banks, and now they are selling to the general public, and this is the kind of thing I think the committee should know about and make the determination of whether or not we will continue to permit this.

Mr. HEFFELFINGER. The bank doesn't sell to the general public, they only deal with their customers. There is a distinction.

Mr. MULTER. Let me get this straight. Between the two things there is a conflict in fact. Whether the bank or the bank-owned corporation that owns the computer system, one of them sells the service to the correspondent bank. Then the correspondent bank sells the service to its customers?

Mr. HEFFELFINGER. To its customers, yes.

Mr. MULTER. Is the customer of the small bank the general public?

Mr. HEFFELFINGER. There is a distinction we make.

Mr. MULTER. What is the distinction?

Mr. HEFFELFINGER. You could be a customer of one bank, but if you are not a customer of our bank, you might say, then you are the general public.

Mr. MULTER. Your bank sells to his bank and his bank sells to him?

Mr. TALCOTT. To its customers.

Mr. MULTER. Isn't the customer the general public?

Mr. HEFFELFINGER. Only to the fact that he is a customer of a—

Mr. MULTER. Why do the customers come to a bank, or where do they come from to the bank, if they don't come from the general public?

Mr. HEFFELFINGER. But here you are dealing with the customers of the bank.

Mr. MINISH. If I understand you correctly, if someone uses your services, he is not the general public, but if he is a depositor in another bank, he is the general public.

Mr. HEFFELFINGER. In order to have the services, you must be a customer of the bank, and then the bank services the customer.

Mr. MINISH. Then he is not the general public.

Mr. COOPER. Let's be specific. A bank in Westchester, Pa., does not have a computer. It has several alternatives. Maybe they could buy their own computer, but they thought it was not economical. They could participate and join a bank service corporation, which they choose not to do.

Now, they have a business out in their town that wants a payroll service from them. They are not equipped to perform it themselves, so they call on us and ask us would we provide the service for them. So we say yes. So the bank in Westchester makes a contractual agreement with their own customer and we just service it for them.

Now, is there anything wrong with that?

Mr. MULTER. What do you do in your own community? Does your bank have this computer?

Mr. COOPER. That is right.

Mr. MULTER. You sell the service to your customer?

Mr. COOPER. Surely.

Mr. MULTER. And you also sell it to other banks, who sell it to their customers?

Mr. COOPER. Right. It is one avenue—

Mr. MULTER. And the regulatory authorities say you can't do this without statutory authority?

Mr. COOPER. No.

Mr. MULTER. And you came down here and got the statutory authority.

Mr. COOPER. The statutory authority was for bank service corporations, not for individual banks. There is quite a distinction there.

Mr. MULTER. Yes. The distinction is just this, having gotten the statute, the Comptroller of the Currency has now broadened this by his interpretation, contrary to what the statute says. He says, go ahead and do this, and render this service to the general public. And that becomes your customer as long as you can afford a computer. Go ahead and get it, and sell the service wherever you please.

Mr. TALCOTT. If that activity is contrary to the law, isn't there some way of enjoining it?

Mr. MULTER. Obviously what we have to do is to enact a statute. I don't know how specific we can make the language, because we thought time and time again our language was very specific.

The underwriting problem is another one where we have specific language, saying the banks can't do something, but a regulatory authority came along and says that it doesn't mean what it says, so go ahead and do it.

The Federal Reserve Board says you can't. The Comptroller says you can.

Now, which regulatory authority are you going to go along with, the one that gave you the opinion you wanted?

Mr. TALCOTT. Surely.

Mr. MULTER. Which one are you going to follow?

Mr. COOPER. We have followed both.

Mr. MULTER. You can't follow both when they are contradictory.

Mr. COOPER. We follow one and ignore the other.

Mr. MULTER. That is not following. That is ignoring.

Mr. COOPER. There is nothing in the statute that prohibits any bank from rendering data processing services to the general public, if it is his customer.

Mr. MULTER. Let's analyze that. Has a bank the right to do anything except what the law gave it a right to do, and that its charter gave it a right to do, within the confines of the statute?

Mr. COOPER. We are only obligated for services within the, that is, those authorized services written into the banking act.

Mr. MULTER. We are not concerning ourselves with anything and everything a bank can do. We want to find out whether or not you are authorized by law and chartered to do it, and in addition to that, whether or not you should be restricted from doing some of the things you may have apparent authority to do, and those things you should have authority to do, and only have apparent authority or no authority, you should get it. That is what we are trying to find out, what are the things that are strictly banking, what are the things incidental to banking, and how much further should we permit a bank to go. That is what we are trying to determine in this committee, and we would like to have your help on it.

Mr. COOPER. Yes, sir.

Mr. HANSEN. Mr. Chairman.

Mr. MULTER. Yes.

Mr. HANSEN. I would like to ask a few questions of Mr. Cooper that might assist us in simplifying this thing a little bit.

I am not an expert on IBM equipment, but I assume that most of this equipment is IBM.

Mr. COOPER. That is one of several.

Mr. HANSEN. One of several, of course, but this is the most popular one.

Now, I understand that an institution can have in its possession a relatively small piece of IBM equipment, for example, that can do a certain portion of this computer work. In other words, they may key punch for example, make up their own cards if they wish. Then they can in turn take these data or record cards that they develop and run them through their own machine, in a somewhat minimal fashion for certain portions of the operation.

Then they may send these out to a more sophisticated center that may or may not be owned by a bank or one of these bank service corporations that have been organized by a bank, or even to IBM centers themselves.

Is this not true?

Mr. COOPER. They have the choice, yes, sir.

Mr. HANSEN. They have the choice. They don't need to go to one or the other, they can perform their own operation and then move it to the more complex center for the development of more complete information and records.

Mr. COOPER. Surely.

Mr. HANSEN. That is the point now, am I correct in assuming all of this?

Mr. COOPER. You are, sir.

Mr. HANSEN. I think this might help the committee make a clearer analysis of this thing, because this does place a little different complexion on the matter. They are not tied to taking their records to one center.

Mr. COOPER. No, sir.

Mr. HANSEN. They have a choice of several.

Mr. COOPER. They have at least three choices.

Mr. HANSEN. Thank you.

Mr. MULTER. Mr. Talcott, any questions?

Mr. TALCOTT. I have no questions about H.R. 10529.

How about the travel agency business? What are your desires, so far as the Bankers Association is concerned, in the travel business?

Mr. COOPER. Mr. Talcott, I do not know of any position that has been developed by the association, and I do not feel that I should comment on that or take any position.

There are several banks in the country that do have travel departments and act as travel agents.

Mr. TALCOTT. It is difficult for me to distinguish between, say, a car leasing operation, where a bank will buy a fleet of 20 cars at the request of a customer, and the situation where a bank has 20 cars on hand like the ordinary car salesman. Would not the bank and the car salesmen get their cars in the same way—by just ordering them from the factory? It seems to me that if all a customer has to do is just request it, the bank will simply say, "We don't rent cars, we don't own them. But if you ask for one, we have it."

There is very little difference between that situation and ordinary car rental agencies that have cars on hand. In both cases it seems you can call on them on an hour's notice and get what you want.

What is the real distinction in these two situations?

Mr. COOPER. Are you referring to the leasing?

Mr. TALCOTT. Yes.

Mr. COOPER. The bank is purely the financing agent here. They would not have any dealings with those who want to rent a car.

Mr. TALCOTT. What is the objection then to leasing a car that is actually owned by a third person, rather than financing a car that is owned by the bank itself?

Mr. COOPER. Speaking of the bank's own fleet? That is, I am not sure I understand your question.

Mr. TALCOTT. I understand that banks want to get in the car leasing business and be able to own the cars they are leasing. Banks call it a financing arrangement, but the bank is actually the owner of the car, rather than just a pure financing agent of a car that is owned by a third person.

Mr. COOPER. I am not familiar with any circumstance where the leasing would be to other than the one who operates it.

Mr. TALCOTT. The bank is not interested in owning the car. Banks then have no objection to a national law that would prohibit the bank from owning in any degree cars for rental purposes; is that right?

Mr. COOPER. Unless you would want to phrase it the other way, to prohibit them from being in the leasing to the general public, in other words, you can find banks that own railroad cars and own airplanes.

Mr. TALCOTT. For their own use?

Mr. COOPER. No, and have leased, for instance, I referred to the United Air Lines.

Mr. TALCOTT. That is a peculiar situation.

Mr. COOPER. There are about 22 banks in here.

Mr. TALCOTT. Mr. Chairman, what is the difference here? Is there any objection by anyone to the banks financing cars that are owned by someone else? This has always been a proper function of a bank. The complaint is where the bank wholly owns the car, and then leases their own cars so that it is more than a simple financing arrangement.

It is the ownership in a leasing arrangement, where they make a profit out of the ownership, rather than from the financing, that is objectionable?

Mr. MULDER. The United Air Lines transaction you referred to I do not believe is unique. I believe it has been traditional in dealing with equipment that runs into the millions of dollars, like airplanes, steamships, railroad cars, and things of that kind, I think it has been traditional to appoint a bank or a trust company as the trustee who holds title to the property until the loan was paid off, but this was a financing arrangement which was coincident to the purchase. The purchaser, railroad, airline, what have you, would want to buy millions of dollars worth of equipment. They didn't have the money but went to a bank and asked them to lend them sufficient money and the bank said, "Yes, provided we are properly secured," and they would make sure the title to the equipment, particularly since it was going interstate, and the State laws vary from place to place, in order to be secure in the title to the property in the event of default, they evolved the system of giving the title to a trustee and the trustee would then divest himself of title or revest the borrower with the title when the loan was paid off.

Now, this is traditional financing. Nobody objects to this kind of financing that I know of and no one will object to the bank getting the utmost in the form of security as collateral and making sure that the collateral at all times was kept good until the loan was paid off.

However, what has developed here now, and what is being objected to is when the bank makes the purchase, they say, "Now we will only make the purchase for a prospective borrower who asks us to make the purchase for them." Then they make the purchase, they own it and rent the equipment to the borrower. This is a sale and leasing arrangement and not a financing arrangement because at all times the title remains with the bank buyer of the equipment who rents the property to someone else. Their income comes from the rental of the property. They are getting back a return of their investment as part of the rental that they get, plus a profit as a profit and not as interest on a loan.

Now, there is no objection to anyone making a profit on this kind of transaction, but this is not a financing transaction. This is a department store transaction, if I may use that term loosely. They are buying that equipment, renting it, they always have the title. It is an investment of the bank's money for purchase of equipment for which they are getting a return by way of rental and not by way of interest. That is the objection.

Now, if the ABA will help us write the language so as to permit them to continue to do the traditional financing they have always done—no one wants to stop them—but keep them out of the department store business, then we will be happy to help them help the public.

Mr. TALCOTT. There is no objection to the true financing arrangement.

Mr. MULTER. None.

Mr. TALCOTT. Whether a trust agreement or a mortgage.

Mr. MULTER. There is no objection to a trust, nor any objection to holding title to a variety of types of collateral, such as mortgages, chattel, or otherwise or through conditional sales agreements or whatever is the proper way in accordance with the best legal advice to make sure they actually at all times own the maximum collateral until the loans are paid off. Nobody can object to that, but the objection raised is to their buying equipment, renting the equipment and they always own it. They have to depreciate it and show that on their books. The profit is coming not from interest on the money loaned, but from money invested for the purchase of equipment.

That is all that I understand we are trying to do by this legislation.

Now, if they can help us, I think we can move forward, assuming the committee agrees with my statement of the problem.

Mr. TALCOTT. And, continuing with the bookkeeping situation, the bank regularly sends a statement to its customers each month, showing the amount of the deposits and the amount of withdrawals according to date and amount, so there would not be any objection to the bank going a step further and segregating these records to better serve some useful purpose of the customer—as long as they don't perform actual professional accounting work in advising customers how or in what manner the different entries should be itemized.

Mr. MULTER. I think here, too, the ABA and its technicians can be of help to us in working out language so we can continue to permit

them to render a complete banking service with everything that is incidental or necessary to that banking service, without their encroaching on other spheres of activity which traditionally belong to others than bankers.

Mr. TALCOTT. We are only concerned with the accountants. We are not concerned with the bankers getting into whatever the farmers' wives have been doing.

Mr. MULTER. We don't want to stop the banks or anyone from rendering a service no one else can render in any community, where they cannot get the proper service in a smaller community. I don't think that applies in larger communities where you have lawyers, accountants, architects, and every type of activity which is not part of the bank service, where they have ample opportunity to shop around and get a person whom they have confidence in that can do the job for them.

Mr. TALCOTT. If we could get the professional accountants and the banks together on H.R. 10529, that would be a satisfactory method for solving this controversy.

Mr. MULTER. I think this would be the ideal way of approaching it, and it was represented to me that H.R. 10529 had been worked out between the accountants and the bankers so that this would do the job. Obviously, the ABA says it does not do the job.

Mr. HANSEN. Mr. Chairman——

Mr. MULTER. Yes.

Mr. HANSEN. I would like to ask a question on another subject of Mr. Cooper, which I think should be covered, where we are talking in terms of property management.

Out in the rural areas in the agricultural West there are several types of farm management, Doan Services of St. Louis. Many individuals out there also have setups such as this, and the First National Co. in Omaha, owned and controlled by the First National Bank is one of several bank-related farm management firms. Can you tell us what the position of ABA is on this type of operation, whether or not they feel that this is an advisable arrangement, to have a closely allied facility, one that is closely related to a bank serve in this role of farm management, where they take over and operate 40 or 50 or 60, or 100 or maybe as high as 1,500 farms for the absentee owners? Can you give us a little outline on that?

Mr. COOPER. You are referring to the actual management and operation of the farm?

Mr. HANSEN. That's right.

Mr. COOPER. I doubt that you would find many interested in doing that unless they had some interest as a trustee or in some fiduciary capacity.

Mr. HANSEN. I disagree with you on that.

Mr. COOPER. Just to go out and manage farms, where there was no demand——

Mr. HANSEN. The First National Co. owned by the First National Bank of Omaha, does a terrific business in this field. Having been on the selling side I know that they are a very lucrative customer. They even go down into such low echelon areas as buying stock tanks for the farms they manage.

Mr. COOPER. I know there are many banks in the country in the rural areas that have agricultural experts on their staff to assist the farmers in management matters.

Mr. HANSEN. That is right.

Mr. COOPER. I think that has proven very helpful to all concerned.

Mr. HANSEN. Well, the reason I asked, and raised this point, Mr. Cooper, is because you said something in your testimony about several of these measures being written in a very broad way. I know that the system of farm management that has been going on out in my part of the country has been working satisfactorily for a number of years.

The question that comes to my mind is the point as to whether or not the enactment of this legislation might some time in the near future or the distant future serve to disrupt or make the operations that are presently going on suspect under the new laws that might be enacted, if enacted the way this is written.

Mr. COOPER. It could if it involves the preparation of financial statements and preparation of tax returns and the use of discretion as it is pointed out here, which is the accountant's prerogative, or the businessman's.

Mr. HANSEN. You mean the use of discretion as to accounting procedure or actual operation of the farm?

Mr. COOPER. Both.

Mr. HANSEN. There is a question which I think should be looked into, because farm management services generally advise the owner even on the point as to where it is best for him to sell his products at a given time. They don't make him sell, but they do advise him as to his selling dates and whether or not he should sign up for another farm program, and quite a lot of intricate little details that go with management of farmland. Let us not get ourselves into a situation here where we create something that we will find it necessary to undo suddenly.

I want to concur with the chairman in one comment that he made. It has to do with the philosophy of this entire discussion. Your testimony this morning has been practically entirely negative, you are objecting to the whole thing, generally speaking.

Mr. COOPER. Right.

Mr. HANSEN. The ABA has not come up with any constructive suggestions, and I think that they are duty bound to provide some to the committee.

Mr. TALCOTT. They made at least one constructive suggestion in my view—leave it to the supervisory agencies, they can make the rules as they go along, rather than writing rigid legislation that pertains to every single bank throughout the United States. All banking areas have different needs and operate under somewhat different rules. I would hate to have one Federal statute enacted that will suit one district and not another, just as I would hate to have a suit fabricated for Mr. Multer and for myself at the same time. If the Federal Government decided to make one suit that will fit both of us, neither one of us would want to wear it.

I think there is some constructive thought here. We can leave the solution to the supervising agencies until somebody comes up with a better idea.

Mr. HANSEN. I will concur with you in part, Mr. Talcott, but I still believe there can be some broad guidelines set up. I don't think that this committee should be a party to stifling efficiency, which we could get into in connection with prohibiting the use of computer equipment with which to service customer needs. In my judgment this should be set up on a basis where the bank's use, or where the equipment used by the banks will have the maximum usefulness because of the complexities that have been developed in payroll deductions, withholding taxes, and all these things that bother the fellow that has been in the habit of doing it with a pencil and paper. I think we can get this matter ironed out so that the practice can proceed with whatever agency is capable of financing the basic central operation without getting involved in matters that would develop some conflict of interest. This is my judgment at least.

I cannot see how it could be possible under proper legislation to develop a situation where the banks would get into the conflict-of-interest situation. I think they should be set into this thing on the basis of carrying on a mechanical operation.

Mr. MULTER. I think Mr. Hansen put his finger on the problem very precisely. What we are trying to do is to set guidelines or standards that should be in the statute, so that no Comptroller and no regulatory authority can misunderstand them. We don't want to get into a position where one Comptroller says that you can do something, his successor says you cannot, and you stop doing it, and then his successor comes along and says you can do it.

I put in the record the ruling of the Comptroller's office which applies to this situation. I would like now at this point to read into the record a brief excerpt from the Senate report.

With reference to the prohibition contained in 12 U.S.C. 1864—this is the statute we enacted in 1962—directed at nonbanking activities on the part of bank service corporations, the following excerpt from the Senate committee report is relevant, and I quote:

The bill is not intended as a means to enable banks to engage in nonbanking activities and the committee looks to the bank supervisory agencies—12 U.S.C. 1864—to make sure that banks do not organize service corporations for the purpose of entering into businesses other than banking.

And then the report continues with this sentence:

For a national bank to engage directly in the nonbanking activity sanctioned by the regulations manifestly would be at variance with the intent of Congress as expressed in the quoted statement, but it seems reasonable to conclude that the committee was of the opinion that national banks already were prohibited by the terms of 12 U.S.C. 24 from embarking upon undertakings not incidental to or necessary for the carrying on of the business of banking, and accordingly the restriction contained in 12 U.S.C. 1864 was essential only to prevent indirect evasion of section 24 from engaging in nonbanking activities by banks or bank service corporations, as agents of the principal.

Now, I think that is the intent of the Congress as expressed in the statutes on the books today. If you need any further authority to render any other nonbanking services, I think you should come in and get it by legislation and not by having one regulatory authority saying you may do it, another say you may not do it. This is the type of thing that I think destroys confidence in the banking system of our country, and I think our job is to try to set the guidelines and the

standards so that there may be no misunderstanding as to what you may do or what you may not do, and we would like to have the help of ABA in arriving at a good piece of legislation.

Mr. Weltner?

Mr. WELTNER. Mr. Chairman, thank you.

Mr. Cooper, I take it that since the last time that hearings were held on this bill, which was in——

Mr. MULTER. 1962.

Mr. COOPER. 1964.

Mr. MULTER. 1964; sorry.

Mr. WELTNER. Banks have continued to operate automatic data-processing equipment for their internal recordkeeping and analysis; is that correct?

Mr. COOPER. Yes, sir.

Mr. WELTNER. And they have continued to use a part of the time on that equipment which is not directly required for their own recordkeeping, for clients also?

Mr. COOPER. Yes, sir.

Mr. WELTNER. And I take it that the cost of the installation and operation of the automatic data processing equipment is still a rather substantial item.

Is it still the case, as was indicated in 1964 that it is necessary to go beyond the walls of the bank itself in order to make the installation and operation of automatic data-processing equipment economically feasible?

Mr. COOPER. Go beyond the walls of which bank?

Mr. WELTNER. Of any bank, to perform services for other than the bank itself.

Mr. COOPER. Other correspondent banks?

Mr. WELTNER. Well, a bank, or client, or customers of the bank itself.

Mr. COOPER. There have been developing, some by mutual arrangement in the servicing, for example, corporations that have their own equipment and banks that have compatible equipment to reconcile accounts by exchanging tapes from their computers. There are things like that developing and it will be more so with data transmission developing at the pace it is.

Mr. WELTNER. Don't you also have billing services for, say, physicians' offices, where they can feed in the data?

Mr. COOPER. Yes, sir.

Mr. WELTNER. And the billing is done on the bank equipment?

Mr. COOPER. Yes.

Mr. WELTNER. And that is done on behalf of the doctor's office?

Mr. COOPER. Yes, sir.

Mr. WELTNER. Don't you have inventory controls which are maintained by the use of that automatic data-processing equipment?

Mr. COOPER. In a number of cases, but not nearly so much as the other services.

Mr. WELTNER. The billing is the primary nonbank use of the equipment?

Mr. COOPER. No. You are referring to what is known as professional billings, where the doctor or dentist sends his records in and

they are tabulated and a statement sent out to the client and checks returned to the bank.

Mr. WELTNER. That is what I understand.

Mr. COOPER. That is right. That is developing throughout the country, and really the demand for it is accelerating at quite a pace.

Mr. WELTNER. That would be prohibited under this bill, H.R. 10529, would it not?

Mr. COOPER. I am not sure. That is where we get into a problem of interpretation of words here.

Mr. MULTER. That is something we will have to decide, whether or not we should prohibit or permit it.

Mr. WELTNER. Isn't that preparation of financial transactions going into basic accounting?

Mr. COOPER. No; not necessarily so.

We are not—the banks with which I am familiar are not—preparing financial statements for the doctor.

Mr. WELTNER. They are preparing a financial statement that is used to bill a sick person who has to go to the doctor.

Mr. COOPER. That is not a strict financial statement.

Mr. WELTNER. Let me get it straight. I am opposed to the bill. I think banks ought to have that right, and I think it absolutely essential if we are going to have the use of automatic data processing equipment, to have the use of that machine 24 hours a day, and that it be available for use during that time, every minute of it. So I am trying to find which one of these five items would prohibit existing practices of banks in the use of automatic data processing equipment.

Mr. COOPER. I think No. 1 would have a greater impact on the professional billing because we have here installed supervisory record-keeping in terms of money—

Mr. MULTER. Have you done that for others? Has any bank installed any or designed or supervised installation of equipment for internal systems of recordkeeping for other people?

Mr. COOPER. Very much so, for other banks, correspondent banks.

Mr. MULTER. Have you done it for anyone other than a bank?

Mr. COOPER. Not to my knowledge; no, sir.

Mr. MULTER. Do you know of any banks that are trying to do it or anyone other than a bank?

Mr. COOPER. No, sir. Here is this question, Mr. Chairman, that when you speak of design, when an accountant comes in to us with one of our customers, the customer and his accountant come in to see us about a payroll service, they tell us what they want, the product they want, all of the deductions for example and our technical men help to design the system to accommodate what they want as the end product. So, here we would have to design a system and install it ourselves in order to meet their requirements, so this is getting more complex—

Mr. MULTER. The banks are now going to become mechanical engineers, architects, designers, draftsmen, and builders of machinery?

Mr. COOPER. There is quite a bit that goes into building up one of these systems.

Mr. MULTER. Do you think banks ought to do this?

Mr. COOPER. Banks can only cover the system design. In other words, the specifications for the system are supplied to the bank, and then a technician has to develop from the specifications the necessary design, and then the programing to accomplish the means to the end of providing this service to which we have referred.

Mr. MULTER. Does the bank have architects, draftsmen, and mechanical engineers on their payroll, or do they go out and buy the services from those who can render them?

Mr. COOPER. I think they buy them.

Mr. WELTNER. Isn't that all part of the fantastic rental you pay on the machines?

Mr. COOPER. Yes.

Mr. WELTNER. And isn't that a substantial part of the cost the programmers, analysts, and people like that?

Mr. COOPER. Yes.

Mr. WELTNER. Could you operate a modern bank without data equipment?

Mr. COOPER. I would not want to try it today, because I do not think we could find enough people. We couldn't find the people to do the job.

Mr. WELTNER. And can you afford to have automatic data processing equipment if its use is limited strictly to the internal bookkeeping affairs of the bank that owns that equipment?

Mr. COOPER. A few banks could; yes.

Mr. WELTNER. That is not what you said in your statement.

Mr. COOPER. That would be the exception to the rule, because of the capacities here and also more important being prepared with capacity to accommodate the customers who come in for these services.

Mr. WELTNER. If you had a bank that needed 24 hours a day for its own purposes, it would be true, would it not, that the bank could pay for that without renting out any of its time or performing any of the other services on it?

Mr. COOPER. If it were only for interior use—

Mr. WELTNER. Yes; if it required 24 hours a day. But that is not often the case, is it?

Mr. COOPER. No, sir.

Mr. HEFFELFINGER. The small- and medium-sized banks cannot afford it today, even though prices are much lower than 5 years ago, sir.

Mr. WELTNER. On page 5 of your statement, you say:

Due to the tremendous capital expenditures incurred in the purchase or lease of such equipment and the fact that the equipment can only be effectively used when operated reasonably close to full capacity, it is natural to assume that many banks obtain it only on the premise that they will be able to provide customers with more and varied banking services.

Is that statement correct?

Mr. COOPER. Yes, sir.

Mr. WELTNER. And, would not a strict prohibition on the use of the services that can be performed by those computers make it, or tend to make it, impossible for many banks to acquire efficient equipment?

Mr. COOPER. To a degree.

Mr. WELTNER. To what degree?

Mr. COOPER. The smaller the size the greater the degree of the problem.

Mr. WELTNER. All right, thank you.

Mr. MULTER. I think our difficulty is in getting a definition of bank services. Could you supply us with such a definition, if not now, in a supplement to your statement—what are banking services?

Mr. COOPER. This is an ever-changing definition, Mr. Chairman.

Mr. MULTER. In other words, you don't want to be limited as to what banking services may be. You want to do anything and everything you may think is moneymaking?

Mr. COOPER. Only what the public expects of it, and that the supervisory authorities approve.

Mr. MULTER. On page 5 of your statement, at the end of your first paragraph you end with the abbreviation "etc." I would like to have you supply a supplemental statement indicating what the "etc." covers. You say such services include bookkeeping, etc. I would like to have you give us the language, all inclusive, of what the "etc." covers, if you will, please, sir.

(The information requested follows:)

THE AMERICAN BANKERS ASSOCIATION,
New York, N.Y., March 11, 1966.

HON. ABRAHAM J. MULTER,

Chairman, Subcommittee on Bank Supervision and Insurance, Committee on Banking and Currency, House of Representatives Building, Washington, D.C.

DEAR MR. MULTER: It was a privilege to represent the American Bankers Association before your committee, yesterday, to present the association's views on H.R. 112, H.R. 117, and H.R. 10529. The courtesies extended by you and your fellow committeemen are sincerely appreciated.

At the conclusion of the meeting you requested that I provide further information with regard to the "etc." that appears at the end of the first paragraph on page 5 of the formal statement presented. The paragraph to which you referred has to do with services rendered by city correspondent banks to their country bank correspondents. The last sentence of the paragraph may be expanded to read as follows:

"Such services include bookkeeping and recordkeeping for demand deposit accounts, savings accounts, mortgage servicing, installment loan accounting, general ledger accounting, cost accounting, Christmas and vacation clubs, payroll service, portfolio evaluation. In addition, to assist country banks in the serving of their customers we might add professional billing, school district accounting, payroll services, and account reconciliation plans."

Frankly, I cannot claim to have included all services now being performed, or those that might develop in the future in bank-related functions. However, I hope the above will adequately serve your purpose.

We cannot stress too strongly the adverse impact that the passage of these bills under consideration would have on correspondent bank relationships. To prohibit city banks from rendering data processing services to their country correspondents would severely curtail the effectiveness of the country banks in serving their communities.

As indicated to you we shall be pleased to supply any other information which you or your committee desires.

Again many thanks for the courtesies extended during my visit.

Sincerely,

G. EDWARD COOPER.

Mr. MULTER. Tell me, where will the banks stop? You are now financing airplanes and automobiles and trucks. Are you going to go out and get the engineers to do the designing of airplanes and build them?

Mr. COOPER. No, sir.

Mr. MULTER. Wouldn't that be the next step? Would you go into the designing and manufacturing of automobiles since you are buying and leasing them now? Are you going to start offering public stenography service to the public, or limit that to your customers?

Mr. COOPER. I think we discussed the problems of banks in a small town.

Mr. MULTER. How about the big communities?

Mr. COOPER. I doubt it.

Mr. MULTER. What about insurance? Which of your banks should be permitted to sell insurance and which should not?

Mr. COOPER. I believe, Mr. Chairman, that there is a case under litigation now in that regard.

Mr. MULTER. We want to have your guidance to rewrite this piece of legislation to cover the situation. Do you think banks should be permitted to sell insurance?

Mr. COOPER. I think we should in some instances, but on that issue, I am afraid we will have to reserve comment until the court makes its decision.

Mr. MULTER. We are going to let the court make the determination. We won't interfere with that. We might have to overrule the decision by legislation if a ruling is made that we do not like. As a banker, I want you to tell this committee if you will, please, and if you are not speaking for ABA in giving us this opinion, I still would like to have your opinion as a banker—should a bank sell stenographic services to its customers or to the general public?

Mr. COOPER. Not where it is available by other means, no, sir.

Mr. MULTER. Should a bank engage in the insurance business?

Mr. COOPER. What type of insurance?

Mr. MULTER. As a broker.

Mr. COOPER. A bank or banker?

Mr. MULTER. A bank. I understand the bankers engage in other activities on the side, if they are not serving full time at the bank and I have no objection to that, as long as there is no conflict of interest in going out and selling insurance or peddling anything. But should a bank be an insurance broker?

Mr. COOPER. Generally speaking, no, unless there were extenuating circumstances in specific cases.

Mr. MULTER. Should a bank be an insurance underwriter?

Mr. COOPER. Commercial bank, a mutual savings bank—

Mr. MULTER. Any bank.

Mr. COOPER. I would doubt that they should be.

Mr. MULTER. Should a bank be a travel agent? Let's leave out the small communities of 5,000 or less where there is no travel agency service available, and let us take the large community where travel agencies are competing with each other daily and regularly. Should banks engage in the travel agency business? We want your opinion as a banker.

Mr. COOPER. In that case there could be a good service, particularly if the bank has an international network of correspondent banks and they would have means of financing that could be very helpful to the general public.

Mr. MULTER. Do you mean by that, that in order to be able to finance the traveling that they should also make the commission on setting up the traveler's accommodations and transportation facilities?

Mr. COOPER. If they do, they are entitled to it.

Mr. MULTER. If they do, they are certainly entitled to compensation, no one expects them to render service for nothing. But should they engage in the business of being a travel agent?

Mr. COOPER. I can see nothing wrong—

Mr. MULTER. Talking about a community of 5,000 or more people.

Mr. COOPER. I can see that.

Mr. MULTER. Where they have more than one bank.

Mr. COOPER. Personally, I can see no harm or any problem.

Mr. MULTER. Whether harm or not, should a bank engage in the travel agency business?

Mr. TALCOTT. Mr. Chairman, I don't have any objection to the bank issuing travel checks, do you?

Mr. MULTER. That is the sale of checks, that is part of the banking business.

Mr. TALCOTT. But it is a very important part of the travel business.

Mr. MULTER. It is incidental to the travel business. You would not go along with authorizing a travel agent to write travel checks would you? I do not mean selling your bank checks. I know travel agencies are authorized by banks to act as their agent in selling traveler's checks.

Mr. COOPER. That is right.

Mr. WELTNER. Doesn't the American Express do that, Mr. Chairman?

Mr. MULTER. Yes; and they are not a bank, but it's about time we subjected it to regulation as a bank.

Mr. COOPER. This question would need a lot of consideration, I would not like to give any final opinion today.

Mr. MULTER. My last question is, and I would like an answer, whether or not we should authorize the travel agencies to issue their own travel checks for sale. Have you an opinion on that, an ordinary travel agency selling facilities, hotel facilities, transportation facilities, selling airline and bus tickets and railroad tickets and arranging for your booking at hotels, should they also be permitted to sell their own, as American Express does, sell their own travel checks, take their customer's money, issue a travel check to the customer for a fee?

Mr. COOPER. You have the problem of the checks being accepted all over the world.

Mr. MULTER. Let us assume they will be accepted, that is for the purchaser to worry about. Let us assume the travel checks, such as the Cook's Tour, who are known over the world—

Mr. COOPER. They have their checks.

Mr. MULTER. They have their checks, yes, just as American Express does.

How about the other travel agencies who operate here in the country? Should we let them sell their own travel checks?

Mr. COOPER. They would not have a market for them.

Mr. MULTER. Assuming that they did, should we authorize them to do it?

Mr. COOPER. If they had a market for them, they could do it, they are entitled to just as much as American Express or Cook's.

Mr. MULTER. New York State prohibits that, or am I wrong?

Mr. COOPER. I am not familiar with New York State law.

Mr. MULTER. In those States that prohibit the sale by anyone except a bank of travel checks, should we now permit other than banks to do it?

Mr. COOPER. We have a law in Pennsylvania, but there are exceptions, I believe you have exceptions too; American Express has been an exception.

Mr. MULTER. That is under the grandfather clause.

Mr. COOPER. It's a new one, no new ones.

Mr. MULTER. Let us exclude the grandfather clause, which applies to Cook's and American Express.

Mr. HEFFELFINGER. It would be hazardous, sir, to the public if that were permitted indiscriminately, then anyone could issue the travelers checks without appropriate supervision, or responsibility.

Mr. MULTER. Would you object to that?

Mr. HEFFELFINGER. Well, with appropriate supervision and responsibility, perhaps under those conditions you would have a better chance of supporting the argument.

Mr. TALCOTT. I don't think it is solely between the person who is issuing checks and the persons who is buying the check, I think the public has an interest here.

Mr. MULTER. In other words, you are saying that——

Mr. TALCOTT. You indicated there was just two of them. I think that is not quite right.

Mr. MULTER. Let's carry the free enterprise theory to its ultimate limits. Should we permit anybody who wants to go into the banking business to do it? You wouldn't go along with that, would you? Just because the man has the money with which to open up a bank, and he is of good character and can qualify as an individual, as a banker, you wouldn't agree that just for the asking he should get a bank charter, would you?

Mr. COOPER. But there are proper channels to apply for a bank charter and if he——

Mr. MULTER. Forget about the proper channels. Shall we say all you need to do is to prove you have got enough money with which to operate a bank and you know the banking business and you are of good character? Should we give him a charter?

Mr. COOPER. Presuming there is no regulation or supervision——

Mr. MULTER. Yes; I am presuming that there is no regulation. Should we repeal all the banking acts and merely say that anybody that has enough money to open a bank and can prove he is of good character and knows the banking business can get a bank charter? Would you agree to that?

Mr. COOPER. I think we could get back to the chaotic conditions we had years ago.

Mr. WELTNER. Mr. Chairman, anybody can write a check, and that is all travelers checks are—just a demand instrument. Any person can accept it, or honor it, or dishonor it, or whatever he chooses.

Mr. MULTER. Can he sell the check?

Mr. WELTNER. Any person can negotiate a negotiable instrument if he can find someone to take it as a holder.

Mr. MULTER. Can he sell travelers checks? Can anybody sell travelers checks?

Mr. WELTNER. I believe, Mr. Chairman, if my credit were good enough, which it is not, to warrant the honoring of my checks worldwide, that I could sell checks for whatever I want to. It is an undertaking on my part to pay to the bearer on demand that check, and I don't believe there is any law in the world that prohibits that.

Mr. MULTER. I think you are mistaken. There are plenty of laws that prohibit it in this country.

Mr. WELTNER. I am not familiar with them. The chairman is far more distinguished and learned a lawyer than I, but I never heard of a law that prohibits a man from issuing his obligation to honor his own instrument.

Mr. MULTER. I didn't say there was anything prohibiting him from issuing it, I said there was a law prohibiting you from selling it as a travelers check. No one can engage in the business of selling travelers checks in New York unless he is chartered as a bank. In New York State this is limited to banks. I thought that was so in most of the States, am I wrong or right about that? Do not most States prohibit anyone but the banks from selling travelers checks?

Mr. WELTNER. Mr. Chairman, travelers checks are not a generic term. As you know, in full committee we had hearings for weeks on the fraudulent money order companies in Georgia. That is the same thing, a money order is an undertaking to pay one's instrument when presented in the hands of a bearer, and is generically the same as a check, travelers check, draft, or American Express check. All are the same. Any person can issue his undertaking without being regulated. Those money order companies were certainly not banks.

Mr. MULTER. Doesn't Georgia law provide today that no one except licensed people or chartered banks may sell these money orders?

Mr. WELTNER. I think not. I think anyone who can convince a purchaser that his credit is good enough to be recognized, when that instrument is sought to be negotiated with some third party—

Mr. MULTER. Well then maybe we ought to address ourselves to the question, should we not prohibit anyone except banks, or persons who meet certain requirements to get a license, from selling money orders and travelers checks?

In other words, putting this in reverse, should we not also at that time consider whether or not we should protect the banks in their authorized business of banking and not let anybody else violate the banking laws, and if they are not broad enough, maybe we ought to broaden them so that nobody else but a bank can render a banking service.

Mr. COOPER. Pennsylvania has such a statute.

Mr. MULTER. Pennsylvania has such a statute?

Mr. COOPER. Yes.

Mr. MULTER. I think most States have.

Mr. TALCOTT. How then does the U.S. Government in the Post Office Department do it, with the postal money orders they issue? They are not banks.

Mr. MULTER. But the postal money order service was set up by statute and it authorized the Post Office to do it within limitations and only within those limitations can they do it.

Mr. TALCOTT. How about the prohibition that nobody but banks can perform a banking service?

Mr. MULTER. In setting up the money order system—that is, the Postal Money Order System—there is no prohibition against anybody else doing this, this was done primarily for the small communities where there were no banks. A man went to the post office instead of getting a bank check at the bank, the man went to the post office and got a money order, but this was done under Federal statute.

Mr. WELTNER. Mr. Chairman, the basic question here, is it not, is to what degree we are going to restrain the operation of modern, changing, efficient services by a travel agent, accountants, banks or anyone else? It seems to me that the real issue at this point is whether we are going to place the dead hand of some restrictive concept of banking upon the normal avenues opening to extend the services of banking on a broad range.

Now, at least, that is my interpretation of the basic issue.

Mr. MULTER. I think you are using different words to state the same issue. We don't think that we are putting any dead hand on it when we are trying to arrive at standards and guidelines which are going to keep banks from doing a banking business and to keep others from the banking business who don't qualify as banks.

Mr. WELTNER. The only justification for that would be in the public interest, though—

Mr. MULTER. That is correct.

Mr. WELTNER. We have no right to sit here to preserve anyone's corner of the market, or to set up barriers to free competition.

My objection to the bank merger bill was that it could be implemented in such a way as to restrict free and open competition. It seems to me that if we put restrictions on banks from doing what their customers want, and what is clearly lawful, and what is efficient, and what is valuable service, that we are erecting artificial barriers to the free competition for the performance of services in this very important field.

Mr. MULTER. That is the issue this committee will have to address itself to. There is obviously a conflict as to what is the public policy and what it should be. We will be called upon to decide whether or not when we give a monopoly to one industry, to one group of people, we will then let them encroach upon the free enterprise system and compete against others in the free enterprise system using the bank charter for that purpose. How far do we let them go, or do we say allow anybody and everybody to be bankers and in the free enterprise system, let each compete with everybody else in any field they care to get into. That is the problem we are confronted with.

Mr. WELTNER. I think the chairman has well stated what the issues are. I appreciate the clarification.

Mr. MULTER. If there is nothing else of these gentlemen—

Mr. MOORHEAD. Mr. Chairman.

Mr. MULTER. Mr. Moorhead.

Mr. MOORHEAD. I would like to ask you, Mr. Cooper, whether I would be correct in my assumption that if we were going to enact one of these bills, that you would prefer us to enact H.R. 10529 instead of H.R. 112? Would that be correct, would you prefer that language or am I wrong about that?

Mr. COOPER. It is a wee bit better but it still goes over—

Mr. MOORHEAD. It is the lesser of the two evils.

Mr. COOPER. It is the lesser of two evils but still a very severe evil in interpretation and limitation.

Mr. MOORHEAD. I do not understand, Mr. Cooper, what you mean at the bottom of page 3 and the top of page 4 about the legislation being an attempt to subject to statute, that which is the administrative jurisdiction of a Federal bank supervisory agency—after all, they, the agencies are creatures of the Congress subject to the jurisdiction of the Congress, and it would seem to me that wherever we could spell out a rule by statute that you would look at it and understand that you would be better off than to be subject say to the unregulated whims of a regulatory agency. This is not particularly this legislation, but a general philosophical approach.

Mr. COOPER. We feel that any attempt to reduce to writing these definitions or restrictions would be very binding and very difficult and that it would be better, as was suggested before, that there are broad guidelines in the administrative functions of the supervisory agencies who would have freedom of interpretation within those guidelines, which we feel we have today, generally speaking.

Mr. MOORHEAD. Thank you, Mr. Chairman.

Mr. MULTER. Thank you very much, gentlemen. You have been very helpful and I hope that you can take the suggestion of the committee and cooperate with us and give us some language which we can use.

I daresay again that I think the majority opinion of the subcommittee and of the full committee is that we have got to do something about this. I don't think you ought to simply take the position that you don't like anything before you. You ought to give us your recommendations of what you in your industry can live with, and let us work our will with it.

Mr. Tesauro, we are very pleased to have you with us and Dr. Robinson who is with you.

We have used up most of the morning, as you realize, with the other witnesses. However, we will continue on Tuesday of next week. I don't want to bring you back, so, what is your pleasure?

Mr. TESAURO. I think I am going to be very brief. How much time do you have, sir?

Mr. MULTER. About 12 minutes.

Mr. TESAURO. We can possibly do it in that time.

Dr. ROBINSON. I think my remarks might be longer.

Mr. TESAURO. Maybe you will have to come back Tuesday.

Dr. ROBINSON. Perhaps so.

Mr. MULTER. You are here in town, sir; you could come back Tuesday, could you not?

Dr. ROBINSON. Yes.

Mr. MULTER. Suppose that Mr. Tesauro proceeds.

STATEMENT OF SAMUEL J. TESAURO, PRESIDENT, S. J. TESAURO & CO., DATA PROCESSING SERVICES, DETROIT, MICH., AND PRESIDENT OF THE ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS, INC.; ACCOMPANIED BY DR. HERBERT W. ROBINSON, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, C-E-I-R, ARLINGTON, VA., AND CHAIRMAN, EXTERNAL RELATIONS COMMITTEE, ADAPSO

Mr. TESAURO. Prior to introducing myself and my colleague, I would like to say here that I am honored by the invitation and came to testify in complete humility, but after hearing the previous testimony my blood is boiling and my humility is quickly leaving me. However, I will stick to my prepared statement under the circumstances of time limitations here.

My name is Samuel J. Tesauero. I am president of the S. J. Tesauero & Co., in Detroit, Mich. My company is and has been engaged in the data processing service business for 15 years. I am also president of our trade association, Adapso, the Association of Data Processing Service Organizations.

Our association has now 130 member companies with about 300 installations throughout the country. As near as we can determine our members do about 80 percent of the data processing services performed by bona fide service centers. We do not consider banks bona fide service centers.

Dr. Robinson who is with me is chairman of our association's external relations committee, and under the circumstances, will make his remarks to you on Tuesday.

Our objection to, or shall I say question and concern regarding banks entering and being permitted to remain in the data processing service business does not directly and completely pertain to—

(a) Whether or not banks presently have a legal right to provide data processing services or any other services they wish, to anyone they may wish.

(b) The possibility that they do or will give us stiff or unfair competition.

We as intelligent businessmen with capital investment, years of hard work and our livelihood at stake do conclude that, when the power of great financial resources which banks enjoy, their prestige position, their clients' obligations to them, and their advertising and sale promotion coverage are employed vigorously and fully to enter the data processing service business and compete with us, the outcome for us is as inevitable as death.

We are also concerned about the pockets of strong economic power that banks have developed and if an increase in this power is good for our country.

We are deeply concerned about our own banking requirements and relationships. For example, can we continue an accounts receivable financing arrangement with a bank, who now competes directly with us in our business, and thereby let them know specifically—

- (a) Who our customers are;
- (b) What we do for them;
- (c) How much we charge them.

We are concerned about the smaller banks and banks in States that do not permit branch banking. What can they do? What will they do?

Generally, the American Bankers Association and the banks themselves say to us, "We only wish to and intend to provide data processing services with regard to financial-type applications incidental to banking."

Clearly they are not adhering to this proposed policy when in fact, as their advertising indicates, they are offering to perform the complete spectrum of data processing service.

Who is to define "financial type applications"?

The bank's intentions may be noble; however, it normally just doesn't make too much sense to do a payroll application via data processing and not do the labor distribution and job cost application as well, nor does it make sense to do an invoicing application and not do sales analysis or inventory control. As we see it the only way control can be established is through the language in bill H.R. 112.

We question whether or not any type business organizations which enjoy a governmentally endowed franchise or charter to participate in a very specific area of business to serve the public needs should be permitted to use their power, which arises out of this charter, over the public and engage in other forms of business historically performed by others not enjoying such charters.

Banks entering the data processing service business do have grave implications. We trust that ferreting out and studying all of the implications will result in legislation that will serve the ultimate good of all Americans.

Mr. MULTER. Is there any difference between the bank buying an airplane and leasing it to a customer or buying an automobile and leasing it to a customer or buying a computer and leasing the services of a computer to a customer?

Mr. TESAURO. Let me make sure I follow you, sir. Buying equipment and leasing it—

Mr. MULTER. They buy airplanes and lease them, and they buy automobiles and lease them.

Now, with the computers, they buy computers, they don't lease the computers, but just sell the services. Is there any difference?

Mr. TESAURO. Yes, there is a fundamental difference when a bank employee is actually operating the computer and writes the programs to make the computer perform, there is a very fundamental difference.

Dr. ROBINSON. May I say that in my opinion, if they buy the computer and then go into the service bureau business, they are really going into an extraneous business. This is another business which we in our association represent.

Mr. MULTER. How about instead of leasing the airplane or truck, they hire a pilot or a chauffeur?

Dr. ROBINSON. Then, they go into the trucking business.

You might say the parallel would be if they bought the truck and actually said, "We are going to take your goods from A to B with the truck."

Mr. MULTER. In other words, it is practically the same thing.

Dr. ROBINSON. Except they would be running the trucks, whereas under leasing, the lessee would operate the trucks.

Mr. TESAURO. Mr. Chairman, with all due respect to the committee members, from what I have heard I sense that the committee members have some misconceptions as to what data processing really is. You do not understand the valid applications on this equipment. You do not really understand how a bank can use this equipment for its own internal use and support the equipment. Even the smallest bank today, can get computers and equipment in all sizes and degrees to suit its purposes, so let us not mislead anyone by saying that equipment today is so costly that the small bank cannot afford it. And, let's not confuse the issue about large banks servicing small banks because the small banks, and I have talked to many of them, are deathly afraid and concerned about using the larger bank's computers or computer facilities or correspondent bank's computer facilities for fear that the large bank will take over their customers.

The smaller banks are getting together in their communities and setting up joint operations, which are fine. But, I want to say that my investigation of it that the small banks are deathly afraid of having this type of work, and I am talking of the true banking services, deposit accounting, and so on, performed by their correspondent banks.

Mr. MULTER. We thought we had helped the banks in that situation, so the small banks could buy computer service from the big banks that owned the computers, or that they could join together with others and set up a computer service corporation that would sell the services only to the banks, and we thought we were restricting them from selling the services to the public.

Now, we find that they are selling the computer services to the general public. Whether the general public becomes a customer or not is unimportant because all a man need do is go in and deposit \$5 and he is a customer.

Mr. TESAURO. I was going to read a letter from a bank, withholding their name, that spells out exactly what you are saying here.

Effectively, they say in their letter, "we are in the computer business, we have set up a subsidiary company, wholly owned by our bank and we are in the data processing service business. We do our own work plus we are out selling data processing services to anybody we can."

Mr. MULTER. And they don't care whether they are a customer or not, as long as it is somebody that will buy the computer service.

Mr. TESAURO. That is the indication in their letter.

It is spelled right out.

Let me read the last paragraph:

Incidentally, you and your members—

Meaning our association—

may be interested to know that we have developed an excellent and most flexible payroll package program which we are presently selling to banks and service bureaus across the country. These programs are written in four tape, 12 K, IBM 1401 are presently being used by more than six other organizations with tremendous success. Our own organization is using this package to process payrolls for more than 75 companies and we are adding new payrolls at a rapid rate without having to worry about program modifications. If any of your members are interested in the purchase of these programs we would be delighted to send them literature.

As I heard the interpretation of Public Law 87-856 and the intent of Congress here this morning, these are just flagrant violations of this law.

It gets to be a little bit ridiculous the way the law is literally being violated by the banks.

Mr. MULTER. Mr. Moorhead.

Mr. MOORHEAD. Thank you, Mr. Chairman.

Mr. Tesauro, would I be correct in my understanding that your industry would be protected by H.R. 112, but would not be protected by H.R. 10529; would that be correct?

Mr. TESAURO. We are concerning ourselves strictly with the data processing service industry here, and H.R. 112 is a little more specific. As a matter of fact we would like to see the words "data processing services" in the language of the bill.

Mr. MOORHEAD. May I ask Dr. Robinson, when you come back Tuesday, if you would direct your attention to suggesting amendments to H.R. 10529 which you think would do the job?

At the present moment I prefer the more explicit language of H.R. 10529, just over the general language of H.R. 112, so I would like to see if H.R. 10529 could not be improved. So, if you could give us your thoughts on that, I for one would appreciate it.

Dr. ROBINSON. Yes.

Mr. MULTER. Mr. Talcott.

Mr. HANSEN. Will the gentleman yield?

Mr. TALCOTT. I yield to Mr. Hansen.

Mr. HANSEN. I merely suggest to the gentlemen, when they come back next Tuesday they give us a rundown of their membership, the States in which they are located, not necessarily the names of the firms, including how long they have been in operation and what degree of growth exists in this business and this industry, what the degree has been in the last 5 years, we will say. I want to see what sort of distribution you have over the country and to what extent you are serving the entire 50 States.

Mr. TESAURO. Yes.

Mr. HANSEN. And what the potentials are for that service.

Mr. TESAURO. Let me say in this regard, that our industry is just becoming of age. We have worked hard for many years to bring it to this point. We are in the process of working with small banks, of setting up centers to serve the rural communities. We know that this is a problem, but we cannot agree that the only way that this problem is going to be solved is through the banks.

We think that we professional data processing service centers can solve them, too.

Mr. TALCOTT. Are you fearful that if the banks are permitted to do it, that you won't be able to compete with the banks?

Mr. TESAURO. No; we are fearful because some of the things I said in my statement about our own banking requirements and relationships. We do not object to good healthy competition in any way, shape, or form. We are concerned about any governmental chartered business being permitted to enter into businesses that are normally and historically performed by others. We question whether this is right, and good for all Americans and in no way do we want to leave the

impression with this committee or with the American Bankers Association or the banks that we are primarily concerned about banks in the data processing service business as far as competition is concerned.

Dr. ROBINSON. I think to answer this question, too, on competition, that aspect, we feel that the cost of these operations are buried in the bank costs, generally, and the operations are not being operated as a separate business enterprise and costed accordingly, and that often the prices put on the services are below cost so that they represent to us very damaging threats to our very existence, because it is melded in the total costing system of the bank.

Mr. TALCOTT. How can we distinguish between the use of data processing equipment by the banks for their own legitimate internal services, and sending out statements to their depositors, which are itemized to a greater degree than was possible before with hand or simple machine posting?

Mr. TESAURO. Mr. Talcott, we can do that very simply for you. If banks would restrict the use of their equipment to the internal needs and improvement of their internal systems there would be no problem. If they want to do their deposit accounting on computers, this is fine; nobody objects to it. If they want to put out their normal bank statements with an improved breakdown and send it to their depositors, this is fine.

Mr. TALCOTT. But what you object to is them breaking down the bank statements into more useful categories—

Mr. TESAURO. We object to them providing a payroll preparation service, preparing payroll checks, reading job cards, computing what the payroll deductions should be, and preparing the payroll check. This is a service that historically has been performed by others. We object to them doing labor distribution as a result of them doing that payroll. We object to them doing inventory control as a result of doing the invoicing. We object to them providing any data-processing services which go beyond their own internal accounting and control functions.

Mr. TALCOTT. You object just because it has not been traditional of the banks, not because they are not competent to perform these services.

Mr. TESAURO. Yes, they are completely competent and trustworthy and they have the financing to operate a good data processing service bureau, however; there are other considerations.

Mr. TALCOTT. The other gentleman's argument I think is more valid, if they are undercutting by hiding costs—

Mr. TESAURO. Let us look at antitrust and restraint of trade. How can we sit here and evaluate, much less prove, a statement that the banks are undercutting and that there is a planned conspiracy to restrain trade? Personally, I don't care how they do or might allocate their costs. Banks are in business to make money, they are not going to give these services away for long; they may be able to last providing outside data processing service longer than we, because they have more money than we do, but this is America and this is free competition and this is the way the ball bounces. This isn't the thing that I personally am concerned about and I believe that our membership as a whole is concerned about, we do not mind competing with

them. We are only questioning whether they should, because of their privileged position, be permitted to provide these kinds of services, and whether this is good for America as a whole.

Mr. TALCOTT. You think it is not good for America as a whole because you have to compete with them?

Mr. TESAURO. I don't believe in giving special concessions to the banks. I don't believe in giving special concessions to the data processing service organizations in order to protect their businesses.

Mr. TALCOTT. What sort of special concession is given to the banks?

Mr. TESAURO. I think, Mr. Talcott, your question was leading toward—are we concerned about our future in this business and going out of it. Yes. We are concerned, but that isn't "the" concern.

Mr. TALCOTT. What concessions do the banks have?

Mr. TESAURO. Sorry, I lost you here.

Mr. TALCOTT. I thought you said the banks had special concessions.

Mr. TESAURO. No, I did not. I said, I do not believe in giving special concessions to banks. I do not believe in we getting special concessions. I do not want the data processing service business restricted just for data processing service centers, that is not what we are proposing.

Mr. TALCOTT. What special concessions do they have now that you are complaining about?

Mr. TESAURO. I am not complaining about anything. I say I wouldn't propose any special concessions for us, I wouldn't propose legislation that said only data processing services, or service centers can do data processing service work.

Mr. TALCOTT. I am not getting an answer to my question, now.

Mr. MULTER. Let me see if I cannot clear it up.

To begin with, everybody in your industry must go to the bank for your financing.

Mr. TESAURO. Absolutely.

Mr. MULTER. These are the people who either will give you the financing or withhold your financing, and they are your competitors.

Mr. TESAURO. True.

Mr. MULTER. The way I see it, this is unfair competition at its worst.

Mr. TESAURO. That is something that has to be proven in the courts.

Mr. MULTER. Now, let's take another form of the dilemma. Banks are prohibited by law from giving their services away. Banks are prohibited by law from paying interest on demand accounts. If in order to get your account into the bank, it gives you computer service, then it is violating the law, and that is what these banks are doing today. That is a right that they have taken unto themselves, which they have no right to have.

Mr. TESAURO. Well, true; if they are violating the law, I think it is up to somebody to test these things in court.

Mr. MULTER. We don't have to wait to go to court, if we can legislate on the problem and keep these things out of court, we are rendering a public service.

Mr. TESAURO. We would like that fine.

Mr. MULTER. Mr. Talcott had some exceptions, I think, to what I said.

Mr. TALCOTT. No; I never have exceptions to take to what you say. I just was trying to clarify it in my mind. If banks are violating the law, this is a very bad situation. Somebody should make them comply with the law.

Mr. TESAURO. If someone thinks some banks are violating the law, he has recourse, there is recourse to violators of the law.

Mr. MULTER. Yes, but when a regulatory agency says, "Yes, you may do what the law says you may not do," then his recourse to the law may go out of the window.

Mr. TALCOTT. That is something else.

Mr. MULTER. That is where we must step in.

Dr. ROBINSON. Also many of our members are very small businesses. They could go to court and become bankrupt. They might win the case, but they would be out of business.

Mr. TESAURO. In all honesty, we could not fight the situation in the courts. We do not have the financing to do it.

Mr. MULTER. Tell me, how long would your loans remain outstanding and not be called after you started a lawsuit against your bank for doing something you said they had no right to do?

Mr. TESAURO. I have no idea, Mr. Multer; not all bankers are bad.

Mr. MULTER. I don't say they are bad.

Mr. TESAURO. Some of them are pretty good fellows.

Mr. MULTER. They have a right to exercise their indiscretion, and in the exercise of their discretion you are bad customers and they don't want you any more because you are inclined to be litigious; you brought a lawsuit against a bank and therefore they don't want to have anything to do with you.

This is an exercise of their discretion. It may be unfair competition, but it is an exercise of discretion against which you can't complain.

Mr. TESAURO. Right.

Mr. MULTER. Thank you very much, Mr. Tesauro.

We will see you on Tuesday morning, Dr. Robinson.

Mr. TESAURO. Thank you, sir.

Mr. MULTER. The committee stands in recess until 10 o'clock Tuesday morning.

(Thereupon, at 12:10 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Tuesday, March 15, 1966.)

TO PROHIBIT BANKS FROM PERFORMING CERTAIN NONBANKING SERVICES

TUESDAY, MARCH 15, 1966

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON BANK SUPERVISION AND INSURANCE
OF THE COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 a.m., in room 2220, Rayburn House Office Building, Hon. Abraham J. Multer (chairman of the subcommittee) presiding.

Present: Representatives Multer, Grabowski, McGrath, Hansen, and Talcott.

Mr. MULTER. The committee will please be in order.

We will resume our hearings this morning on H.R. 112, H.R. 117, and H.R. 10529.

The first witness we have scheduled for this morning is Dr. Robinson who was with us when we had our last session. Dr. Robinson, will you come forward with the gentleman who is with you?

Dr. ROBINSON. Mr. Tesauro.

Mr. MULTER. You may proceed.

STATEMENT OF HERBERT W. ROBINSON, CHAIRMAN, EXTERNAL RELATIONS COMMITTEE, ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS, INC.; AND CHAIRMAN OF THE BOARD, C-E-I-R, INC.; ACCOMPANIED BY SAMUEL J. TESAURO, PRESIDENT, S. J. TESAURO & CO., AND PRESIDENT, ADAPSO

Dr. ROBINSON. I am Herbert W. Robinson, chairman of the external relations committee of Adapso—the Association of Data Processing Service Organizations, Inc. I am also chairman of the board of directors of C-E-I-R, Inc., a member of the association. I am submitting for the record the geographical coverage of the members of Adapso and the locations in which they operate. Since this was prepared there have been substantial additions to the organizations in our association. Our membership is still, however, only a small portion of the firms comprising the industry as a whole, which is relatively new, and typified by small businesses. We have counted over 1,750 separate enterprises in the data processing field in the United States, most of whom run very small operations and do not belong to Adapso. You will realize from these facts that the independent data processing service bureaus represent an important new industry which covers the United States. With respect to my own company, we started operations about 12 years ago and last year we had a busi-

ness of over \$20 million and operated in Boston, New York, Washington, San Francisco, Los Angeles, Mexico City, San Juan, P.R., London, England, and The Hague, Holland. I should mention that we have many friends in the banking community, especially since we do the demand deposit and other data processing for 22 smaller banks in the Washington area. I am testifying today, of course, in my capacity as chairman of the external relations committee of Adapso and will endeavor to present the position of the bulk of the membership.

Our membership, many of whom are small businesses, heartily endorses H.R. 112, since, for reasons which I will enumerate later, it feels that if the large banks are free to engage in our industry on the same basis as heretofore it will sound the death knell of the small independent service bureau.

I speak for all members of Adapso in saying that our motivation is not to seek to limit competition in our industry. Indeed, we welcome honest competition, since we believe in the American free-enterprise system and the benefits competition brings to the whole community. However, we feel that in the case of the large banks, their entry into our industry as an extraneous activity, run to achieve other purposes of the bank and not as a strictly profitmaking activity, seriously injures our industry. It also has other aspects which are not in the national interest of the United States.

I appeared before the committee 2 years ago and much of my testimony will repeat what I said then. However, I have endeavored to update the testimony in view of the fast-changing technology in the data processing industry. Moreover, in view of the complexity of the problems facing the Congress, and the misconceptions which can so easily be acquired about our industry—and I may say that misconceptions seems to have pervaded the prior testimony in the current hearings—I will endeavor to give you, in layman's language, some idea of the technical facts of life now governing developments in the data processing service bureau industry.

I must say parenthetically at the outset that we in Adapso have been astounded that the large banks have proceeded to offer data processing services outside the scope of their strict banking functions. We protested to Congress in 1962 when H.R. 8874 as originally proposed would have enabled the banks to set up service subsidies to provide up to 50 percent of their services to persons other than banks; that is, to engage in the commercial data processing business for the general public. The Congress heeded the many objections raised and specifically prohibited the banks from doing this in Public Law 87-856 as enacted in 1962. Apparently the large banks have completely disregarded the obvious intent of Congress to prohibit them from engaging in this extraneous activity. They seem to have argued that though they are prohibited from setting up a separate creature to do this, they are perfectly at liberty to do it themselves. I suppose that those members of Adapso who have been injured by the activities of the large banks could sue on the basis of Public Law 87-856, but quite obviously few of our members have the financial resources to engage in the kind of legal battle with a large bank that such a suit would entail.

A fundamental fact that it is most vital to recognize is, I believe, that the banks do not have to be in the service bureau business. In previous testimony there seem to have been two implicit assumptions which have gone unchallenged but which are false. The first assumption is that the large banks have to install very large computer systems and cannot avoid the problem of unused capacity. This is the basis for the argument that they might just as well use this surplus to serve their customers by offering service bureau services. The second assumption is that there is no one else in the community who stands ready to give the public these services and that the banks are the only source from which the smaller businessman and farmer can obtain such services. I would like to dispel both these illusions.

First, the equipment manufacturers are providing complete lines of equipment from small installations costing only \$5,000 a month to giant installations costing upward of \$200,000 a month. In this spectrum, literally dozens of configurations can be put together through a building block approach, which can meet precisely any particular set of requirements. There is no technical reason whatever why a bank need install any more capacity than it needs for its strictly banking requirements. The manufacturers will allow the customer to enlarge his configuration from one system to the next higher system as and when his volume of requirements expands, providing, in effect, an elastic capacity. Moreover, present-day equipment is so designed that once the computer programs are written—the set of instructions for a machine that makes it do what you want—these are literally transferable from machine to machine, without rewriting the programs, as you move up the scale of capacity. It might be claimed that bank work peaks at certain hours and therefore needs excess capacity, but in my opinion there is no reason today why the banks' data processing cannot be conducted evenly around the clock. Very few data processing operations are so urgent that they must be performed in a minute, an hour, or even within 12 hours, so that if a large bank is interested in keeping costs down, there is no reason its machines cannot be operated on its banking work at least 16 to 20 hours a day. Moreover, the independent service bureau industry, whose scope is indicated by the exhibits I have given you, is delighted to serve the banks and to provide for them any overflow services they might need to meet their peakload or emergency requirements. The latest technological developments, whereby a user can plug in a terminal device into a central computer via telephone line and have his time as he needs it, also make it totally unnecessary for the bank to have excess capacity. In short, a decision by a bank to maintain more capacity than it needs for its own strictly banking business must today be laid to the door of a desire to move into this extraneous service bureau activity for some other reason, not because it has to have a use for surplus capacity.

As regards the second assumption, that if the banks do not provide data processing services the small businessman is unable to find a way to use this new technology in his business, the existence of our industry and its wide geographical coverage is a proof that private industry has shown no hesitation in responding promptly and effectively to satisfy this need. Moreover, most of our operations are conducted by small individual entrepreneurs who usually put in many hours of

midnight oil and must, because of intense competition, strive in every imaginable way to keep costs down to a minimum. From an economic point of view the most effective way of supplying data processing services to the public is in fact through these specialized service bureaus operating around the clock for many customers and under the continuous pressure of making a profit in the operation. The number of companies engaged in the field has been growing in response to demand—our own membership has doubled since I testified 2 years ago—and my own company, C-E-I-R, is presently initiating a franchise program to franchise independent businessmen to come into this business. The needs can readily be satisfied without the banks—and can, moreover, be satisfied by professionals whose primary mission is to completely satisfy all the customers needs, not merely to provide a sideline to promote the banking business.

Another fundamental fact to understand about this problem is the fact that the main reasons for the large banks' desire to provide service bureau services to business is in fact the competition among banks for deposits. Many of these large banks have charged nominal if not zero prices for their services. Why? They are certainly not in business to lose money. The answer is that they expect this lure to attract customers from other banks who cannot or do not wish to offer these services. If they can obtain more customers their deposits will grow, their lending capacity will grow, and their profits from their total banking operations will be increased. It is that simple. Now if we look at the whole banking community, large banks and small banks, at any one point of time the amount of deposits in the community must be fixed. The only way the large banks can increase their deposits is at the expense of the small banks. We believe that the main motivation for the large banks being in this business is to increase in size by attracting customers from the small banks.¹

I might also point out that the provision of these kinds of services at low prices as an inducement to customers to transfer their accounts to the large banks is in effect making a payment on demand deposits, which, I understand, is also against the law. Another important point, I believe, is that if we consider the whole banking system, the provision of such services on a large scale at less than true cost must inevitably increase the cost of banking. One wonders whether this kind of development is not one factor leading to the considerable rise in interest rates now going on in this country.

No industry can afford to supply a loss leader if the loss leader becomes a sizable part of its business. The large banks have, I believe, so far regarded this activity as a small sideline, but as I will explain later, as the service bureau industry grows in size those banks that are not pricing these services realistically will discover that they have built a Frankenstein monster which will greatly inflate their costs of doing business and which will be difficult to get out of the house once it has sunk deep roots as a member of the family.

The next area I would like to cover is the competitive advantages enjoyed by large banks by virtue of their unique quasi-monopolistic

¹ We were surprised in 1964 to notice that Mr. Babington, president of the Independent Bankers' Association, wrote to the chairman opposing H.R. 9548 which would have restricted the large banks from conducting these activities. We are baffled why the members of that association—mainly small banks—allow their association to go on record supporting an activity so injurious to their own interests.

position. The banks enjoy an enviable position. Not everyone is allowed to engage in banking, and their position as banker gives them substantial influence over their customers through their ability to extend or withhold credit. This is extremely important in considering their ability to take data processing business away from the independent service bureau. The large bank is in a position to tie the supply of data processing services to customers with its lending of funds; a major consideration in these days of tight money.

In addition, most large banks are not costing their data processing service activity as if it were a separate profitmaking enterprise. Many of the costs are buried in the total cost of their banking operations. I am convinced that in looking at the problem of pricing a big data processing job for a customer the bank considers every revenue aspect of that customer's business. It considers the interest it obtains from loans made to the customers, the probable balances in the customer's account—indeed, it may insist on such balances—and the revenues from other bank services it will automatically perform. However, even so, I doubt that many banks maintain—as we do in our business—a sound accounting of revenue from a customer versus the true total cost of supplying him with all the data processing services.

Very few of the large banks have set up the data processing business in such a way as to demand from it a profit based upon revenue from the data processing activity alone. Quite obviously the problem of competing with an organization that does business in this way is extremely difficult for a company whose only business is data processing. We have noticed, as indicated in the exhibits I supplied during my previous testimony in 1964, that many of the large banks are providing services at much lower costs than even the most efficient service bureau can match. This, we believe, is not due to any superior efficiency in their operations but merely because a large part of the costs are being assigned arbitrarily to the banking operations. Members of Adapso do not mind competing with a new service bureau operation operated as a separate business. We are convinced that with our expert know-how and the economies we have originated over the years we can do a competitive job. But, how do you compete with a competitor who is not interested necessarily in making a profit? I have been advised by some that we have no problem at all, that all we need to do is provide a more efficient service than the bank and in the long run we must prevail. But I am afraid that if the kind of pricing that we encounter continues, in the long run we will all be dead.

I would like now to turn to the implications of the banks undertaking this kind of activity for the banking system itself. The financial soundness of our banking system is obviously vital to our country. This new service bureau activity of the large banks, which at present is relatively small, can become such a large operation as to threaten the financial security of the banks themselves. Electronic data processing is an extremely expensive activity. The kind of machines that are used by the large banks can cost in machine rental alone as much as \$60,000 or \$70,000 a month and the cost of space, power, supplies and, most of all, expert supporting personnel, can multiply this figure by two or three times. The installation of excess capacity and recruitment of a stable of experts can be very sizable financial obligation.

Moreover, in executing data processing contracts for customers beyond the strictest confines of banking itself, the large banks will become involved in all kinds of data processing activities extending into every aspect of economic and industrial life. The consequences of errors and omissions can be extremely costly, especially if account is taken of consequential damages. What is the potential liability of a large bank which runs inventory costs of a company far above what they should be and in consequence the company fails? The legal liability of the bank to its customers will obviously be greatly increased. It seems to me that this aspect is doubly important in view of the fact that the FDIC is guaranteeing deposits of depositors and any activity of the bank which creates additional risks creates additional risks for the FDIC and therefore for the taxpayer.

I would like to explain to you the trends of data processing as I see it over the next 5 years. Technologically the industry is now moving toward very large central computers connected by data communication links with remote terminals where the data processing can be done at a distance. This now entirely feasible technically—we in CEIR are actually operating such a system today in the Washington area—and I am personally convinced that in 10 years' time 50 percent of all the data processing in the country will be done through these huge central computers. Will the banks who are going into the service bureau today install these huge computer systems and operate them as a separate business? If they do, the financial stakes and the additional risks will grow to extremely large proportions and their data processing activity for the general public could become very large in relation to the banking activity itself.

Having been in this business for 12 years I can assure the committee that it is not easy to make a profit and quite easy to make a loss, and I personally would hesitate to make a deposit of more than \$10,000 with a large bank that was intending to go into the data processing business for the general public on this kind of scale over the next 5 years. I am afraid that the banks have not yet recognized what they are actually getting into when they express their desire to serve the general public with all these data processing services. This is for the simple reason that they are not yet technologically educated but rely entirely on the advice of the technical people running their computer installations, whose advice obviously cannot be objective.

If a large bank doing this kind of work were to faithfully project what its expenses will be over the next 5 years if it engages all out in this kind of activity, I suspect that the president of such a bank would recoil in horror and immediately abandon his ambitions in this area. I might add that, under future conditions, no longer would the operations be so small as to be costed on a marginal basis but they would be so large and would have to be wholly self-supporting as a separate enterprise and the competitive edge that the large bank can bring to bear would be far less than it is today and the financial risks correspondingly higher.

I would like to sum up these remarks by repeating the basic points.

First, the banks do not have to be in the service bureau business, they can readily obtain equipment tailored to the needs of their banking operations alone and do not have to have excess computer capacity.

Second, there is an ample supply of data processing services provided by private enterprise independently of the banks.

Third, such activities if conducted as at present, will build in substantial increased costs in banking which must be passed on to the general public in the form of higher interest rates.

Fourth, the banks have distinct competitive advantages because of their unique quasi-monopolistic position which threatens the existence of companies specializing professionally in the industry who do not have these advantages.

Fifth, there are distinct financial hazards in operating this kind of business and future technological developments will cause the stakes to multiply many times over, thus jeopardizing the financial integrity of the banking system.

For all these reasons, therefore, Adapso urges the Congress to enact H.R. 112 as presently drafted except that we would respectfully suggest that the words "data processing" be specifically included in the language.

I would like finally to address myself to a question raised by Mr. Moorhead. He asked us, if H.R. 10529 were to be the vehicle rather than H.R. 112, how would we suggest amending the wording of H.R. 10529?

I would suggest in the general description to add after "professional accounting" "and data processing services."

Mr. MULTER. Where would we include that?

Dr. ROBINSON. It is the introductory sentence, "To prohibit banks from" I would add "professional accounting and data processing services."

Mr. MULTER. In the title?

Dr. ROBINSON. In the title.

Mr. MULTER. Where would you add it in the body?

Dr. ROBINSON. In line 11, page 1. I would add "(1) the design, installation, and supervision or operation for others, of computers or data processing services" and make the present number 1, number 2.

Mr. MULTER. That completes your statement, sir?

Dr. ROBINSON. That completes my statement.

Mr. MULTER. Thank you very much, Dr. Robinson. That is a very fine statement.

You referred in your opening to giving to us for the record geographical coverage of the members of Adapso.

Dr. ROBINSON. Yes, sir.

Mr. MULTER. That is this booklet?

Dr. ROBINSON. That is the booklet of our membership with location, and you will find listed the States, the cities, and the members of Adapso. This is not all the data processing organizations in the country. It is only a small part of them.

Mr. MULTER. I wonder if you could take one of these booklets and give it to us in such form that we can exclude all the advertising matter and then add it to our record. This is much too bulky to print. The advertising has no place in our record. Could you do that?

Dr. ROBINSON. We could strip it of advertising and give you a new copy.

Mr. MULTER. Fine, we will add that to the record.

(The information referred to follows:)

ASSOCIATION OF DATA PROCESSING SERVICE ORGANIZATIONS, INC.

Member locations in the United States, Mar. 18, 1966

Alabama:	
Birmingham-----	Service Bureau Corp.
Arizona:	
Phoenix-----	Do.
Arkansas:	
Pine Bluff-----	Business Service Corp.
Little Rock-----	Service Bureau Corp.
California:	
Arcata-----	Robert H. Helm Co.
Beverly Hills-----	C-E-I-R, Inc.
Glendale-----	Applied Data Services.
Goleta-----	Control Data Corp.
Inglewood-----	Matrix Corp.
Long Beach-----	The Service Bureau Corp.
Los Angeles-----	Apex Data Processing, Inc.
Do-----	Honeywell, Inc.
Do-----	Universal Data Processing Corp.
Do-----	Service Bureau Corp.
Do-----	Do.
Oakland-----	Data II.
Do-----	Service Bureau Corp.
Palo Alto-----	Control Data Corp.
Do-----	Service Bureau Corp.
Pomona-----	Do.
Riverside-----	Data Processing Bureau.
Sacramento-----	Systems Data Processing Co.
Salinas-----	Valley Statistical Services, Inc.
San Diego-----	Service Bureau Corp.
San Francisco-----	C-E-I-R, Inc.
Do-----	Recording & Statistical Co.
Do-----	Stanford Data Processing Corp.
Do-----	Service Bureau Corp.
San Jose-----	Do.
Santa Monica-----	Do.
Visalia-----	Electronic Business Service.
Colorado:	
Denver-----	Delcos, Inc.
Do-----	Service Bureau Corp.
Connecticut:	
Hartford-----	Do.
New Haven-----	Applied Data Processing, Inc.
Do-----	Service Bureau Corp.
Waterbury-----	Automated Accounting of Connecticut.
District of Columbia:	
Washington-----	C-E-I-R, Inc.
Do-----	Do.
Do-----	Service Bureau Corp.
Wheaton-----	Do.
Florida:	
Ft. Lauderdale-----	Electronic Data Processing.
Jacksonville-----	Computer Services, Inc.
Do-----	Computing & Statistical Service
Miami-----	Miami Data Processing Center, Inc.
Do-----	Systems Programming Service, Inc.
North Miami-----	Service Bureau Corp.
Georgia:	
Atlanta-----	Datafax Corp.
Do-----	Management Services, Inc.
Do-----	Service Bureau Corp.
Savannah-----	Georgia Data Processing Corp.
Hawaii:	
Honolulu-----	Peat, Marwick, Mitchell & Co.

Member locations in the United States, Mar. 18, 1966—Continued

Idaho:	
Idaho Falls	Machine Tabulating Service, Inc.
Illinois:	
Chicago	Chicago Tabulating Service, Inc.
Do	May & Speh Data Processing Center.
Do	Recording & Statistical Co.
Do	Service Bureau Corp.
Do	Do.
Do	Robert F. White & Co.
Decatur	Central Computing Co.
Oak Park	Service Bureau Corp.
Peoria	Do.
Rockford	Do.
Indiana:	
Indianapolis	Do.
Iowa:	
Cedar Rapids	National Data Processing Corp.
Des Moines	Service Bureau Corp.
Kansas:	
Wichita	Do.
Kentucky:	
Louisville	Do.
Louisiana:	
New Orleans	Do.
Maine:	
Portland	Process, Inc.
Maryland:	
Baltimore	Fedder Data Processing Centers, Inc.
Do	Service Bureau Corp.
Rockville	Control Data Corp.
Massachusetts:	
Auburndale	Tabulating Service Corp.
Boston	C-E-I-R, Inc.
Do	Service Bureau Corp.
Do	Recording & Statistical Co.
Cambridge	Keydata Corp.
Chestnut Hill	Research Calculations Inc.
Swampscott	S. A. Ferbank (formerly Data Tabular Service).
Wellesley	Honeywell, Inc.
Wilmington	AVAC/RAD—Industrial Services.
Michigan:	
Detroit	Burroughs Corp.
Do	Datronix Service.
Do	Russell Kelly Service Bureau.
Do	Statistical Analysts.
Do	S. J. Tesaro & Co.
Do	R. G. Wild & Co.
Do	Service Bureau Corp.
Do	Do.
Flint	Do.
Grand Rapids	Do.
Lansing	Do.
Minnesota:	
Minneapolis	Control Data Corp.
Do	Do.
Do	Data Management Inc.
Do	Do.
Do	Scientific Computers Inc.
Do	Service Bureau Corp.
Missouri:	
Kansas City	Do.
St. Louis	McDonnell Automation Center.
Do	Service Bureau Corp.
Springfield	Data Tabulating Corp.

Member locations in the United States, Mar. 18, 1966—Continued

Nebraska :	
Lincoln.....	Lincoln Tabulating Center.
Omaha.....	Automation, Inc.
Do.....	Service Bureau Corp.
New Jersey :	
Clifton.....	Automatic Data Processing, Inc.
Do.....	Fisher-Stevens, Inc.
Denville.....	Thiokol Chemical Corp.
East Orange.....	Service Bureau Corp.
Hackensack.....	Manley Data Processing Co.
Paramus.....	ITT Data Processing Center.
Trenton.....	Service Bureau Corp.
New Mexico :	
Albuquerque.....	General Index Data Processing, Inc.
New York :	
Albany.....	Service Bureau Corp.
Buffalo.....	Do.
New York City.....	Control Data Corp.
Do.....	Data Decisions Corp.
Do.....	Datatab, Inc.
Do.....	PCS Data Processing, Inc.
Do.....	Recording & Statistical Co.
Do.....	Do.
Do.....	Statistics for Management Data Processing, Inc.
Do.....	Tabulating & Business Service, Inc.
Do.....	Tabulating & Data Processing Corp.
Do.....	Service Bureau Corp.
Do.....	Do.
Do.....	Do.
Do.....	C-E-I-R, Inc.
Rochester.....	Data Processing Systems.
Do.....	Rochester Computer Service, Inc.
Do.....	Service Bureau Corp.
Syracuse.....	Do.
White Plains.....	Do.
Do.....	Westchester Computer & Tab Service, Inc.
New York (Long Island) :	
Hempstead.....	Service Bureau Corp.
North Carolina :	
Asheville.....	Datamatic Services, Inc.
Charlotte.....	Service Bureau Corp.
Raleigh.....	Independent Data Processing Corp.
Ohio :	
Akron.....	Kraus-Wallace Service Bureau, Inc.
Cincinnati.....	Service Bureau Corp.
Do.....	United Data Processing Services.
Cleveland.....	Electronic Tabulating Co.
Do.....	Service Bureau Corp.
Do.....	Professional Datamation, Inc.
Columbus.....	Service Bureau Corp.
Dayton.....	Do.
Do.....	Do.
Toledo.....	Do.
Oklahoma :	
Oklahoma City.....	Do.
Tulsa.....	Data Control Co.
Do.....	Southwestern Computing Service, Inc.
Do.....	Service Bureau Corp.
Do.....	University Computing Co.
Oregon :	
Portland.....	American Data Services, Inc.
Do.....	Service Bureau Corp.
Do.....	United Data Processing, Inc.

Member locations in the United States, Mar. 18, 1966—Continued

Pennsylvania :	
Allentown.....	Service Bureau Corp.
Erie.....	Do.
Harrisburg.....	Gannett, Flemming, Codry & Carpenter.
Do.....	Service Bureau Corp.
King of Prussia.....	Electronic Data Processing Corp. of Pennsylvania.
Lemoyne.....	EUR Datacenter, Inc.
Philadelphia.....	Walter Camenisch, Inc.
Do.....	IDR Co.
Do.....	Insurance Data Processing, Inc.
Do.....	Johnson Computing & Tabulating Co.
Do.....	Service Bureau Corp.
Pittsburgh.....	Do.
St. Mary's.....	Automated Data Processing, Inc.
Scranton.....	Penndata, Inc.
Puerto Rico :	
Santurce.....	Service Bureau Corp.
Rhode Island :	
Providence.....	Do.
Do.....	Wingate Computing Center.
Tennessee :	
Memphis.....	Memphis Methods & Tabulating Service, Inc.
Do.....	Service Bureau Corp.
Nashville.....	Data Service Corp.
Texas :	
Abilene.....	Unitab Co. of Abilene.
Dallas.....	Service Bureau Corp.
Do.....	Tabulating Services of Dallas.
Do.....	University Computing Co.
Fort Worth.....	Service Bureau Corp.
Houston.....	Control Data Corp.
Do.....	McDonnell Automation Center.
Do.....	McGinnis, Hall & Hecht, Inc.
Do.....	Service Bureau Corp.
Do.....	Do.
San Antonio.....	Data Processing Center.
Do.....	Service Bureau Corp.
Virginia :	
Arlington.....	C-E-I-R, Inc.
Norfolk.....	Leach, Calkins, & Scott.
Roanoke.....	Payne's Data Processing Service, Inc.
Richmond.....	Service Bureau Corp.
Washington :	
Seattle.....	Professional Machine Accounting, Inc.
Do.....	Service Bureau Corp.
Do.....	Tabulating Services, Inc.
Wisconsin :	
Milwaukee.....	Service Bureau Corp.

Mr. TALCOTT. What all does it show?

Mr. MULTER. The purpose of this is to give us the names and addresses and States in which their members are operating to show the national coverage of the organization.

Mr. TALCOTT. Do we need their telephone numbers?

Dr. ROBINSON. If you like we can just give the names.

Mr. MULTER. Names and cities would certainly be sufficient.

Dr. ROBINSON. Yes.

Mr. MULTER. The names, cities, and States without the telephone numbers, addresses, and the names of the officers. We do not need that either.

Mr. TALCOTT. Do we permit the inclusion of a trade association roster for the banks and savings and loan associations?

Dr. ROBINSON. I think Mr. Hansen asked specifically for this, this last time.

Mr. TALCOTT. Names and addresses, telephone numbers?

Dr. ROBINSON. We thought this would provide the information. It is evidently too voluminous.

Mr. TALCOTT. Money is no problem for the Federal Government, so we will let it go.

Mr. MULTER. We have already covered the problem of the addresses and telephone numbers. This is in answer to an inquiry. We will strip it down so we have just the information requested.

Mr. HANSEN. In connection with that, you plan, of course, to show the city of operation?

Mr. MULTER. Yes; city and State.

Mr. HANSEN. That is all that is actually necessary.

Mr. TESAURO. I would like to make it quite clear that there are, as Mr. Robinson said, some 1,700 service bureaus throughout the country. They are not all members of our association. So our membership is by no means a representative distribution of the entire industry. Typical of a growing industry of basically small businessmen, the last thing they seem to have time for is the activities of an association for the benefit of their industry. We are growing all the time. How soon the predominance of these firms become members remains to be seen. We do not want anyone here to be misled with the idea that our membership represents the industry distribution per se. There are many, many firms that are not yet members of our association.

Mr. MULTER. This is typical of every trade association. Even the banks who are dealing with other people's money find that the bank trade associations do not always have every banker or every bank as a member of the association.

Mr. TESAURO. The point has been repeatedly made that we do not have the coverage and this is why the banks in the outlying communities must provide these services. I think that somebody is being misled.

Mr. MULTER. I know that is one of the reasons for giving us this statement, not so much to show your membership, but to show in almost every community there is this service being made available to those that may need the service or want the service.

Mr. TALCOTT. I hate to be picayune about this, but if this is not all of the data processing business we are just advertising one trade association here.

Mr. MULTER. Mr. Talcott, if there are any other trade associations in this industry that want to submit anything we will be glad to receive it. If there is any individual company rendering this service who is not listed because they are not members we will be very happy to add to the record their names if they will send them in to us.

Dr. ROBINSON. I am sure they would all feel as we do.

Mr. MULTER. I am sure you do not suggest that what we do is take the classified directory of every city and go through it. If they are sufficiently interested they ought to make that interest known to us.

Mr. TALCOTT. All I am suggesting is that we should not take this one trade association and advertise it in our record. I withdraw my objection, however.

Mr. MULTER. If you can indicate how we do not give any association any advertising when they come before us—

Mr. TALCOTT. By just using only their statement which indicates they have large numbers throughout the United States but not mentioning the specific names and addresses—

Mr. MULTER. We have already covered that. We are not mentioning the names of officers. We are just going to mention the States, cities and the names, and not the addresses or telephone numbers or anything else. If anybody thinks this is advertising they will have to check their local areas to find it out. Instead of putting the names in maybe we ought to give them numbers.

Mr. McGRATH. We could program it in some way.

Dr. ROBINSON. We could give you a tabulation by States if you prefer.

Mr. TALCOTT. To my knowledge this is the first time we have ever added all the names and address of all members of a trade association in the record. I may be in error.

Mr. MULTER. I think you are in error. I have examined this. I have challenged many associations many times when they have come in and challenged them as to whom they represented. They then submitted to us the names and places from which they came. I have challenged many of these organizations and trade associations that came before us offering or pretending to talk for an industry or for a large segment and they had to come forth and show whom they did represent. In some instances they showed they were representing themselves under a fancy name for a trade association. In other instances they came in and showed that they did represent a substantial part of the industry.

Mr. TALCOTT. I will take your word for it.

Mr. MULTER. Dr. Robinson, I think there is one thing you overlooked in pointing out the dangers that may flow from permitting the banks to continue to offer these services to the general public. Most of the banks today are servicing their employees; they are serving their employees and officers with dining room facilities so that they do not have to go outside the bank to get their meals at lunchtime and for their coffee breaks and the like. It would be a lot more economical and much more profitable to them, where they owned this service and if they opened this service up to the general public. Where a bank is not close to a restaurant facility why should they not open these facilities up to the general public and make some money on it?

Dr. ROBINSON. Why not sell peanuts in the lobby?

Mr. MULTER. I think some of them do have vending machines that sell cigarettes and peanuts and other refreshments. Why not let the general public come in and use these services whenever they have these vending machines. They are going to be able to charge them a lower rate of interest if they get a big profit on the vending machines.

Mr. TALCOTT. Shall we put public food and drink vending machines in the bill? I am willing to.

Mr. MULTER. I am willing to put into these bills anything and everything that will exclude them from selling any service to the general public except banking services without excluding these services to their own people.

Mr. TALCOTT. I am willing to put in public restaurants and vending machines.

Mr. MULTER. I think when we get to marking up the bill we can find an appropriate place. I think the same thing applies to stenographic services. If you have a bank that has too many stenographers why should they not put them to work selling public stenography to the general public? Where are we going to stop? Take their leasing. They are now buying automobiles and trucks and leasing them to their customers. Why should they not put in a service station and when they are not servicing their own automobiles service the general public and sell the general public gas and oil and washing facilities.

Mr. TALCOTT. Let us put these facilities and services in also.

Mr. MULTER. I think we should.

Mr. TESAURO. Mr. Chairman, in reading from Public Law 87-856, section 4, it says, no bank service corporation may engage in any activity other than the performance of bank services for banks.

Paragraph B says the term "bank service" means services such as checks and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, and notices and similar items or any other clerical bookkeeping, accounting, statistical or similar function performed for a bank.

I am afraid that these words, "preparation and mailing of checks" bother me, particularly as to misinterpretation. There is no doubt in my mind that Congress meant the preparation and the mailing of checks which were being cleared through banks for the person who had a checking account and wrote the check. I do not think that Congress intended they prepare Chrysler Corp.'s payroll or Ajax Manufacturing's payroll or any other payroll. They intended simply the gathering of the checking account customer's checks, preparing them for the clearing statements, and returning them.

In fact as I read in my testimony last week from a letter from a bank, who set up a bank service corporation, they have completely closed their eyes or misinterpreted this law. When this law was enacted, it seems reasonable to assume that it was enacted because they did not have in the existing law the right to perform these services. They still do not have this right. Yet, they are performing payroll preparation services and not through bank service corporations.

Mr. MULTER. On the bottom of page 8 of your statement, you conclude in that last sentence, by including the words "and therefore for the taxpayer" indicating there is a risk. I think you probably meant they are a risk to the depositor because the Federal Deposit Insurance Corporation does not maintain itself on taxpayers' money. It is maintained completely, and its reserves are built up by FDIC out of a special assessment made against the banks. FDIC is insuring the deposits of the banks. The risk therefore is the risk of the depositor rather than the general taxpayer.

Dr. ROBINSON. I was thinking of a situation such as in the thirties where the banks were generally in trouble, and what happens if the Government has guaranteed these deposits? You could hardly tell people that deposits are federally guaranteed but the guarantee is no good.

Mr. MULTER. You are laboring under a general misconception of the American public as to FDIC and FSLIC and what they are supposed to do. I repeat again, if the time ever comes that these corporations do not have enough to pay the deposits within the limit affixed by law, the U.S. Government will have to make good, even though this is not a guarantee of the United States. Because the advertising that is permitted by these insuring agencies indicates that these accounts are insured by an agency of the U.S. Government, that misleads the general public into believing that this is a guarantee by the U.S. Government. Therefore, if ever there is not enough money in these insuring companies, in addition to what they are permitted to borrow from the Treasury to make up their deficits—that is not enough—the U.S. Government will not be able to withstand the public pressure and it will have to make good on the advertised guarantees even though there is none by the Government.

Mr. TALCOTT. I think there is some disagreement with that view. This kind of statement only contributes to the probability of liability of the Federal Government because, Mr. Multer, you are a very responsible, able, and influential banker, and when you tell the people that they can count on being bailed out, they are likely to believe it and expect it.

Mr. MULTER. I am telling them they have no right to count on it. But when the time comes the pressure will be so great, the U.S. Government will have to step in just as we did when we formed the Home Owners Loan Corporation. We will have to do that here and bail them out if ever that misfortune befalls us. I hope it will not come. It happened before. It may happen again.

Dr. ROBINSON. My assumption is that it will be politically impossible not to honor the guarantees.

Mr. TALCOTT. In that case we should not have the program as it is now. We should run it either politically or economically—not both.

Mr. MULTER. I do not agree with Mr. Talcott that we should not build up an organization with reserve funds against the time the Government may be called on to make up these losses. We are building this up out of the earnings of the banks and we hope that someday it will be large enough so that we will never have to call upon the Government to make the loans provided by law. In one instance, it is three-quarters of a billion dollars to the FSLIC and in the other \$3 billion to FDIC. The Government has never been called upon to make any loans to either of these agencies. As a matter of fact, the FDIC has long since retired the Government stock or capital investment. In FDIC they retired this capital investment. It has long since been retired out of the earnings of FDIC. Maybe we can go on in this prosperous era that we are enjoying long enough to get to the point where these reserve funds will be built up to such a point there can never be a loss to the depositors. I hope we can get to that point.

Mr. McGrath, any questions?

Mr. McGRATH. Yes, I want to congratulate Mr. Robinson for a very sensible and clear statement. I am curious whether C-E-I-R still has that office in my district at the National Aviation Facilities Experimental Center.

Dr. ROBINSON. Where was that precisely?

Mr. McGRATH. Did you not have a field office?

Dr. ROBINSON. What city?

Mr. McGRATH. Pomona, N.J., outside of Atlantic City.

Dr. ROBINSON. I do not think we are operating on that contract now. That was a contract with the FAA.

Mr. McGRATH. A contract with the Federal Aviation Agency?

Dr. ROBINSON. The contract has been completed.

Mr. McGRATH. Someone mentioned 1,700 companies that are engaged in this business. Would you say that most of those companies have gone into business since World War II?

Dr. ROBINSON. Well, I think so, yes. There is a big turnover in this industry. A lot of these small companies stem from the days of punchcard data processing, a very small operation. But now they are putting in the electronic computers and we were surprised when we found that there were over 1,750 of them. We got these figures from a very thorough study of the Yellow Pages in connection with our C-E-I-R franchise program.

Mr. McGRATH. That is a good indication of the resourcefulness of the free enterprise system and your industry is filling a great need in the economy as we know it today. I have no further questions.

Mr. MULTER. Mr. Talcott?

Mr. TALCOTT. Have you taken any legal action to try to prohibit the banks from doing something illegal under the Banking Act?

Mr. TESAURO. May I, Mr. Talcott?

Mr. TALCOTT. Either one.

Mr. TESAURO. Until I came here last week, I honestly was not completely aware of the existing regulations under the Banking Act. In my opinion these laws, as they exist, preclude the banks from entering into this peripheral service business. What action we will take I do not know. To my knowledge it has not been any taken. But I, for one, certainly intend to pursue this line. I think if laws are written, and they are being broken, somehow there should be a way to stop the breaking of a law.

Mr. TALCOTT. Should there not be a determination that the law has been broken? You are assuming that the law has been broken.

Mr. TESAURO. Yes, sir.

Dr. ROBINSON. First, technically, is it really illegal, is the present law so written that it prevents a bank itself from doing this? That is a legal question that I could not answer.

Mr. TALCOTT. That is right.

Dr. ROBINSON. We do not know how much the legal work would cost to find out.

Secondly, the association has very few funds. The members individually have very small resources. The magnitude of the undertaking to actually sue a large bank is too great for our finances. We just cannot do it. We have to rely on someone else.

Mr. TALCOTT. It seems very important to your industry to have this determined.

Mr. MULTER. If this Congress can make the determination they need not go to court.

Mr. TESAURO. True, then we would not have to bother. This is a real problem, Mr. Talcott, because as I understand it, we would liter-

ally have to bring suit in practically every State in the United States. The possible alternative is——

Mr. TALCOTT. I do not think that would be necessary.

Mr. TESAURO. You can say bring suit in one State and the precedent will take over. But I think that we should——

Mr. TALCOTT. You would certainly influence my decision as one member of the Banking and Currency Committee if your establish some illegality.

Mr. MULTER. I think the Congress has enough good lawyers and enough good nonlawyers to understand what the Congress meant—— what the congressional intent is.

Mr. TESAURO. It appears that the congressional intent here was that banks were not to set up these bank service corporations to enter into the data processing business service and to perform service for others, other than banks themselves. It is perfectly clear and I think any high school graduate could interpret this language. I do believe, Mr. Talcott, that we should have some discussions with the Comptroller of the Currency because here is where it seems the source of the problem stems, from his interpretation.

Mr. MULTER. If his interpretation is wrong?

Mr. TESAURO. Then it appears we have no recourse but to see what we can do about enjoining him from permitting his interpretation to prevail.

Mr. MULTER. The point is, if a bank should ask the Comptroller of the Currency for a ruling that it may do this and the Comptroller says no, should the Congress insist that you then bring a lawsuit? I think the problem, having been presented to the Congress, we ought to resolve it before calling upon the courts. We should not tell the general public, whether it be a bank or a nonbanker, go to court and get your rights determined. Obviously there is a question as to whether the banks should do it. Some of them are doing it. Some of them are not. We, in the first instance in the Congress should make the determination as to how far a bank may go in rendering nonbanking services. If these are banking services or if these services are determined by the Congress to be such, the banks should be permitted to render them; otherwise, no.

Mr. TESAURO. Our association stands by ready to help Congress in any way it possibly can, to come to some determination on this subject.

Mr. TALCOTT. If, as you suggested, a high school student can determine it, I think we need no more advice or counsel.

Dr. ROBINSON. I was president of Adapso when the bill, H.R. 8874, was being considered, and we sent letters to all members of the House and Senate committees and I have in my files letters from most of the members endorsing our position. They felt, almost unanimously, that the banks should not engage in this business, competing with private enterprise.

Mr. TALCOTT. I have no further questions.

Mr. MULTER. Mr. Grabowski?

Mr. GRABOWSKI. No, sir.

Mr. MULTER. Mr. Hansen?

Mr. HANSEN. I have several that puzzle me a little.

On page 10, in the second item in summary of remarks, the statement is made that there is an ample supply of data processing service provided by private enterprises independently of the banks.

Going through your book I note in taking a nose count on the States west of the Mississippi River, to the Rockies in upper Middle West, meaning the States of Iowa, Nebraska, Minnesota, Kansas, North and South Dakota, Montana, and Colorado, there are about six centers in which data processing equipment or centers are located.

Let us go a step further and assess the area west of the Missouri leaving out Iowa and Minnesota. You find one at Wichita, Kans., and one in Denver, none in either of the Dakotas, none in Montana. I cannot bring myself to believe that this is adequate coverage.

Mr. TESAURO. Mr. Hansen—

Dr. ROBINSON. Mr. Hansen, I think you should recognize that this represents only the membership of Adapso which is about 130 companies. The total industry is 1,700 or more companies, so that this is not a comprehensive list of all the bureaus. I think that if you go to any city in your travels and pick up the yellow pages and look under "Electronic Data Processing" or "Service Bureau," you will find companies listed under that heading. In fact, we were surprised when we went through every yellow book in the country to discover the extent of this industry. Private enterprise usually responds to a demand. I have a great faith in our private enterprise system responding to any demand, and these people are looking for business. Everybody is trying to open another branch somewhere. The real problem is that very often the business is not there in sufficient volume.

Mr. HANSEN. Then, secondly, in the third item, there is an implication made rather sweepingly that the indulgence of the banker in this type of activity will build in substantial increased costs for his operations. Now, that being the case, what is the point in having computer systems at all any place?

Dr. ROBINSON. My point here is, Mr. Hansen, that if I am running a bank and I need, say, a machine that would cost \$10,000 a month, and this would do all my internal work, if I install a machine costing \$15,000 a month because I would like to go after the depositors of the other banks and offer free services to attract those deposits, I am building in extra costs for the whole banking system because when I take that deposit from the other bank I have not increased the deposits in the system one iota. But I have increased the costs of doing business in banking by \$5,000 a month.

Mr. HANSEN. That is a little hard for me to fathom. I do not follow it.

Mr. TALCOTT. I do not think the directors of a bank would last long if the bank did not make money.

Mr. HANSEN. Finally, on page 8, reference is made to the question of liability on the part of the banker in case his computer setup has made some mistakes. Would you infer by that, then, that all of these computer centers should assume financial responsibility to their customers?

Dr. ROBINSON. We do—and it is a very considerable risk. People have gone out of business through improvident contracts.

Mr. HANSEN. How do you cover that? With a bond?

Dr. ROBINSON. We have some insurance, but it is limited. The penalties could be very great if you make a serious mistake which is

very costly for a customer. We carry insurance up to a million dollars. But if the damage was \$2 million it would be a very serious financial problem for us.

I may say here that I feel the bank examiners should look into the banks when they are doing this kind of operation and see whether they are setting up proper reserves for these contracts and whether they are losing money on them. When Arthur Anderson does our accounting, if we have a bad contract in the house they make us set up a reserve for the entire cost of completing that contract over the future. Do the bank examiners do this when they see an improvident contract? What about the work of the bank examiner in checking up on the bank if he has to examine its entire data processing operation from the point of view of possible liabilities? I do not believe this work is really being done today.

Mr. HANSEN. The thing that puzzles me on this whole matter, is that if this is such a hazardous business, then there really should not be too much point of scrapping your way into it.

Dr. ROBINSON. We find that it is a tough business and it is only hardy souls who survive. The banks apparently want to go into it and I am simply pointing out that I believe that they have underestimated the risks and what they are getting into. I do not think the banks themselves are well advised to have this ambition.

Mr. HANSEN. The other point that I think it well to stress is the dispersal of your membership over the United States—it indicates quite clearly again, that there are variables throughout the country and that what may be a good thing for legislative action or good legislation in a State like New York might not be worth a lead dime in a State like North or South Dakota or Wyoming or Nebraska or Iowa or Kansas. I will be frank with you, I have mixed emotions about this proposition.

I may have appeared negative toward you men, but that is because I have been searching for an answer. I have not yet found it. I do not see how the people out in my area of the country can get full advantage of data processing operations if we are to completely restrict the banks in that area from indulging in it.

Mr. TESAURO. Is it not true that most technological innovations, any service of most any nature comes last to the least populated areas? Because this is where the least market is. It becomes simply an economic business problem as to what—as to how much business there is in a given State or a given community. The service does come eventually, but certainly not at first.

Mr. HANSEN. That is very true, Mr. Tesauero. But the point I am trying to make, is that the only way that the technological development under discussion can be established or made available to the people in an area such as the Midwest is to have it operated by someone who is serving in a dual, treble, or quadruple capacity. A country general store, so to speak, where you can go in and buy everything you want for your household.

Mr. TESAURO. I have no objection to a general store going into the data processing service business.

Mr. HANSEN. They have no particular use for it.

Dr. ROBINSON. If I may make a remark here about this problem. If you do not have a service bureau in a small town it is because, to

that service bureau it is an uneconomic endeavor. They cannot make money. How can we argue that the banks should take on the uneconomic endeavor? It is precisely the point that I am making about them building up their costs. If they have the ambition of taking over all the uneconomic endeavors in order to get deposits, this is not the way to have sound, profitable banking.

Mr. HANSEN. We are not going to improve their profits whether they have data processing services or not in some bank in Minnesota or North Dakota.

Dr. ROBINSON. My question is, how will they cover the costs of these loss operations?

Mr. HANSEN. Based on your own directory there is very sparse coverage out there and I could name you a dozen towns in Nebraska that will probably be capable of supporting a data processing center if they could command most of the business in the area. I am sure that the business opportunities out there are not so numerous but what there should be someone interested in it.

Mr. TESAURO. If the banks in those communities would finance a branch for me I would be more than pleased to open one.

Mr. HANSEN. Of course someone has to make the approach.

Mr. MULTER. Should we not put it the other way, Mr. Hansen? Are the banks in these small communities putting in the computers and selling the services to the general public?

Mr. HANSEN. No, what I am bringing up is the centers where this service is being offered by members of this association are so scattered, that distances become an insurmountable problem. Now we have a situation, for example, with the Brenton Banks in Iowa who have their own center for their own banks. It is a bank holding company, if you want to call it that. They have banks scattered all over central Iowa. And all those that are within a reasonable road distance from the computer center that they operate bundle up all their work each day and it goes into the center at night and it is back at the local bank when it opens the next morning. If you fellows can come up with some notion that this sort of thing can be developed, people will use this service. They will use the service to the profit and the benefit of the area. But somebody that has the financial backing must come in and set it up. Actually the only people who have any knowledge of this type of industry or operation out in that area to any great extent and who are financially capable of instituting the service are the banks at the moment.

Dr. ROBINSON. Mr. Hansen, have you heard of "Mail Me Monday"?

Mr. HANSEN. I have seen it, yes.

Dr. ROBINSON. This is an organization that serves 20,000 separate small businesses throughout the United States through the accountants. The accountants work up their accounting systems with small businessmen and the Mail Me Monday organization that is located in San Diego and in New York does the accounting by mail. They actually receive the information by mail, process it on an electric machine—an electronic computer—and return it. I believe private enterprise is responding to the needs in the best possible way.

Mr. TALCOTT. Would not banking bookkeeping service help "Mail Me Monday"?

Dr. ROBINSON. It would put them out of business.

Mr. TALCOTT. Are they just a bookkeeping service?

Dr. ROBINSON. A data processing service. The small businessman gets his checks and his bills and so on, mails them in in an envelope and "Mail Me Monday" on its computers does the data processing, sends them completed statements and so on about the business. If the banks operate and take this over, "Mail Me Monday" goes out of business. And the local accountant loses customers.

Mr. MULTER. Let us put this in perspective for a moment. When the computer business got organized some banks could buy computers, some felt they could not afford to do it. Banks then did buy computer services from data processing companies, those that could not buy their own system. Then they came along and said, look, we would like to form a cooperative banking service corporation that would service only the bankers by putting capital in from each of the banks into such a corporation. We then can do this without buying the services from outside separate companies. We will then have a computer service that will be the kind of company we want, we will control it, and it will render the service to the banks.

We wrote into that bill a provision that they could do this provided that company would sell service only to the banks. They found that this was fine, and they did that. Now, they are coming along trying to get in through the back door what we did not give them through the front door. Now they want to sell these services to the general public. Nobody has taken the position that banks should not be able to buy these services anywhere for their own use. What we are concerned with here is the issue of whether or not a bank should be able to sell these services to the general public, not whether or not they can get the services for themselves, not whether or not they can set up their own corporation to service banks, but whether or not any individual bank should be able to put in this kind of service and sell it to the general public. I think that is the issue.

Now, I made a fast count of the number of States here. I have excluded the countries outside of the United States because we are not concerned with that. I counted quickly, that you have members or associate members in 39 States, the District of Columbia, and Puerto Rico.

You might, if you will, since you have indicated that you already checked the classified directories throughout the country, indicate to us, in the other 11 States in the United States, whether there are computer services available in those other 11 States. Obviously they are not members of your association. Whether they are or not indicate that to us please, so that we will know whether or not the 50 States have these services available and have people who are rendering this kind of service that your members are rendering. Supply that to us at a later date.

(The information requested follows:)

Number of service bureaus not members of Adapso, listed in "yellow pages" for States not containing an Adapso member or branch:

Wyoming-----	4	North Dakota-----	1
Delaware-----	6	South Dakota-----	1
Mississippi-----	13	Vermont-----	3
Montana-----	9	West Virginia-----	10
Nevada-----	21	Alaska-----	4
New Hampshire-----	6		

Mr. HANSEN. One other question. At the top of page 9, there is a look into the future outlined. Perhaps you can explain to us a little more about what you actually mean, Mr. Robinson, when you talk about the computers, central computers, connected by data communication links with remote terminals. This question came to mind when you brought up "Mail Me Monday." That is a communication link by mail and obviously that would have to be pieces of paper that the fellow had written out in pen and ink or on the typewriter.

The statement at the top of page 9 alludes to a more sophisticated means of communication. Can you explain that to us a little?

Dr. ROBINSON. Yes. Incidentally, I think that this is going to be ultimately the solution of your small community, they would just have the terminal device.

The local service bureau would be able to operate with only a small terminal device.

Mr. MULTER. What is this terminal device?

Dr. ROBINSON. I will explain this to you.

It is possible today to have a large central computer and we can hook up directly through the telephone lines to a small terminal device located at a distance where, by pressing keys, you can transmit data directly into the central computer and you can transmit the data from the central computer back and have it printed out. Now, this means that if you take C-E-I-R, that we can have in our plant in Arlington a huge computer, we can store in the memory all the information about the customer, we can also store all the programs that are needed to run his particular problems, his particular payroll program, or what have you. When he sends in information, say, to update Joe Doaks' salary, or to call for the payroll computation, the central computer will itself, through what we call the monitor program, which is like a manager of the system, automatically perform its job. It says this is company X, it needs this particular job. We will go to its data, we will take its machine program, and then we will do the operations on a central computer and send back the results over the wires. Now, this means that the user is able to get in effect exactly the same service as if he were actually at the console of that computer.

As we conceive the development of the industry, the service bureau of the future will design the management control system, including the accounting, with the help of professional accountants. We will not go into accounting, but we would help design a complete management information system and the customer would simply be updating his data and calling for his various reports. The central computer would be turning these out on a regular basis for many customers. The economies will be much greater than at present. The financial stakes will grow tremendously. We are talking about \$6 million and \$8 million installations.

Mr. TESAURO. You have probably seen this operate at the airline terminals when you go to American airline counters and ask for a seat on any given flight. You will notice that the clerk will touch some keys on an input unit that is right at the counter. The actual computer is in New York and you may be in Miami, Fla., or most anywhere and the computer instantaneously responds and indicates on the receiving unit at the counter whether or not there is a seat available on

that flight. So if you will visualize in any community or in any business this type of input and/or receiving unit. Let us take for example, the specific instance of a bank, a small bank where all the records are being maintained at a central computer at another location, and the teller wants to know whether there is enough money in your account to cash your check. She merely puts your account number into the input unit and instantaneously the computer sends reports on the receiving unit as to your bank balance. This is a very simple kind of explanation of it. But we do have the ability to do this.

Mr. MULTER. That is being done in the large banks that have 100 or more branches. You can offer your check for cashing at any branch and they will use that terminal device to call into the main office and find out whether or not you have enough money to cover the check.

Mr. TALCOTT. In the future, would it not be better, simpler, and cheaper for the businessman just to authorize his bank to give this basic information from the bank records directly to the "Mail Me Monday" or whoever he was dealing with?

Mr. TESAURO. Again, Mr. Talcott, I do not know whether you were here at the particular time during the last hearing when I qualified and said, please, no discredit to the committee, but we are dealing with a very simple subject when we discuss data processing. I am afraid it is a much more complex subject than you realize. Data processing services per se have little to do with the banking operations per se. Any bank can use data processing equipment for internal work just fine. But when it gets out of the realm of their own internal banking business it is a completely different subject, completely different problem.

Mr. MULTER. The fact is that if we do not restrict them by a bill such as we have before us—if we do not restrict them and make it sufficiently plain that we do restrict them—there is nothing to stop a bank from putting in this central system and selling to any one of its customers a terminal device and giving them all the services of a data processing system.

Dr. ROBINSON. And I am afraid the tail will wag the dog. They will be in the service bureau business and not the banking business. If the large bank has this development going for it, it will threaten the very existence of the small bank. This means concentration of power in the hands of very large banks. Again, if we are going to store all the information about all the customers in this huge memory bank, what a concentration of knowledge and power you are putting in the hands of a large bank who is controlling credit. Is it a healthy development for the banks to get into this kind of activity as a separate business? I think not. I thought they were in banking.

Mr. MULTER. Have you finished, Mr. Hansen?

Mr. HANSEN. I think so. I am still as puzzled as I was when I came in this morning.

Mr. TESAURO. We would be delighted to spend any time necessary with you and give you any information that we can about the data processing service business.

Mr. MULTER. Is there any large computer system operating in the city of Washington?

Mr. TESAURO. Yes.

Mr. MULTER. Maybe you could arrange to have all the members of the Banking and Currency Committee come down and see a demonstration of this system and how it operates. I think that may help us understand the problem.

Mr. TESAURO. It would be no problem to show you the diverse applications that go on in data processing services and that they have no relationship to banking.

Mr. MULTER. I am frank to say, and I have gone into some of these places and I did again recently. Despite the fact that both my sons are engineers and they have tried to give me some explanations, I go out just as amazed as when I went in.

Dr. ROBINSON. We will be delighted, Mr. Multer, to show you our installation which is just across the river in Arlington near the Pentagon.

Mr. MULTER. Is there any in the city of Washington?

Mr. ROBINSON. We are just across the 14th Street Bridge.

Mr. MULTER. I would suggest that you set a time and send out invitations to all the members of the Banking and Currency Committee. You might extend it to members on the Senate side, too. Invite them down for a demonstration of your data processing equipment and the service you render. Maybe that would help us all.

Mr. TALCOTT. Is there a bank nearby that you think is particularly competitive with your business?

Dr. ROBINSON. I am glad to say that in Washington, the banks have generally not gone into this kind of business and, as a matter of fact, we serve 22 banks and do the demand deposit accounting for them.

Mr. TALCOTT. Where is the closest bank that is a good example of the unfair competition to your business? Perhaps we could observe first hand how serious this problem would be?

Dr. ROBINSON. I think in Philadelphia. I would have to let you know which is the nearest.

Mr. TESAURO. I could point out two in Detroit who are providing data processing services.

Mr. MULTER. I think this might be worth your doing. Take the Congressional Directory and note the cities in which the members of the full committee reside and indicate to those members where there may be a bank in their communities, if any, that is doing the kind of thing that you are complaining about and then each member could go into their own city and see what they are doing.

Mr. TESAURO. Can we contact the service bureau in that city as well?

Mr. MULTER. Yes.

Dr. ROBINSON. We can reproduce the "yellow pages," too, to show how many are operating.

Mr. TALCOTT. I can obtain the "yellow pages" from my district and the service bureau agencies from my district.

Mr. HANSEN. Mr. Chairman, I want to concur in your suggestion. When I said I was just as puzzled as I was when I came in this morning I did not mean to imply that I thought I would ever get unpuzzled as far as the operation of one of these large computer centers is concerned. I think that it takes concentration and specialization. One can get some notion of how complex it is by taking a look at it and having it explained. The thing that I am confused about is the question of whether or not the enactment of this bill as recommended by

these men would be good for every single situation that we find in the United States. That is the point that is confusing me. I still have not found any clarification. I am not in a position to offer any suggestion to bring about a resolution of that question in my mind. I would hope that you men might come up with some suggestion that would relieve that problem.

Mr. TESAURO. Let us take that first step and scour the yellow pages in any States we do not have a member and see just what services are available there.

Dr. ROBINSON. If you could suggest, Mr. Hansen, one or two small towns of the type that you have in mind we could actually look up who is operating there.

Mr. HANSEN. Pretty small, most of them. There are centers in Des Moines and Cedar Rapids, I notice, where you have members. There is none in Council Bluffs. One in Omaha across the river. None in Sioux City which is out of my district, but a next-door neighbor. Then, there are a variety of cities like Fort Dodge and Boone and Ames. I am speaking now about the 20,000 and 25,000.

Dr. ROBINSON. I am sure we can look up for you and see who is operating in these cities, if any.

Mr. HANSEN. Check Harlan, Iowa. It seems to me that someone has set up some type of accounting service with a computer center. This is just a small town—a small county seat of about 4,500.

(The following information was submitted for the record:)

C-E-I-R, INC.,
Washington, D.C., March 17, 1966.

HON. ABRAHAM J. MULTER,
House of Representatives,
Washington, D.C.

MY DEAR CONGRESSMAN MULTER: I have had our people check out the cities specified by Congressman Hansen during the hearings last Tuesday and I enclose a list of the service bureaus operating in those cities and listed in the yellow pages.

I trust this information will be of value to you in considering H.R. 112.
Sincerely yours,

HERBERT W. ROBINSON, *Chairman.*

Council Bluffs: Michael Data Processing Center, 200 First National Bank Building, Council Bluffs, Iowa.

Sioux City: Hines Tax Service, 522 14th Street, Sioux City, Iowa.

Fort Dodge: Van's Data Processing Service, 328 South Eighth Street, Fort Dodge, Iowa; M. W. Hemphill Bookkeeping & Tabulating Service, 508 Central Avenue, Fort Dodge, Iowa.

Boone: No data processing service.

Ames: Iowa State University, Ames Laboratory AEC, Ames, Iowa.

Harlan: No yellow pages directory for Harlan.

Mr. TESAURO. The very small kind of business would not necessarily profit from using data processing services. I hope there is not a concept here that data processing is good for the gas station or the corner drugstore or this general type of very small business. It is not necessarily an effective thing for them to do. The old system that they have been following for years and years could very well be more effective for them.

Mr. HANSEN. I question if very many would go into the sophisticated operation that Mr. Robinson described, or having a memory bank and that sort of thing. In our area, the chief interest in this sort of thing rests in one phase of accounting that most people have

a lot of trouble with. This is a matter of payroll in a plant of 50 to 400 or 500 people. This gets to be quite a problem for management to handle where there are all the multiple deductions and so on. When they have the opportunity of running it through a facility of this kind which is presently the central bank in Des Moines, they jump at it.

Mr. TESAURO. Mr. Hansen, our organization has 150 employees. We pay equipment rental of some \$25,000 a month for electronic data processing equipment. We process our own payroll for our 150 employees on a Hadley one-time-write system. We know the data processing business, we have the equipment, yet we do not process our own payroll on the equipment because it does not happen to be best for us to do so. Please do not be misled into thinking that everybody who has 25 or 50 or 100 employees can best have their payroll processed via data processing. This is emphatically not true.

Mr. HANSEN. I think you are right on that. However, when it gets to 250 or 300, then it poses a different question. You did exactly as I have done. I have thrown out all the machines and used the Hadley.

Mr. MULTER. Mr. Talcott, did you have another question?

Mr. TALCOTT. Some people in my area are interested in having banks perform some data processing, although I do not know whether it meets your description of data processing. They are the doctors, dentists, and accountants—people who do not have the time and should not be taking their valuable professional time on very menial tasks of record collecting and simple bookkeeping. They would like to be able to devote their time to their profession of doctoring, dentistry, or accounting and get some of this gristwork out of their hair. They felt that the bank was performing a valuable service for them that was not performed anywhere else by anyone else.

Mr. TESAURO. There are services of this type available all over the country. I believe what is happening at this business level is: (a) the doctors feel that when the statement comes from the bank their patient is more apt to pay it because the bank now knows that they have an outstanding debt to the doctor. I think this is the connotation that is involved and the reasons why the doctor might like to do it through the bank rather than through an independent data processing service center.

(b) I feel some doctors and dentists have not necessarily come around to having confidence in the independent data processing center, about the confidentiality of the data. They have a little more confidence in the bank in knowing what the total billings are. The data processing industry has made tremendous inroads to the establishment of confidence over a period of years. When we first started in this business, the first prospect that I called on was deeply concerned about the confidentiality of data. This concern is rapidly disappearing. These are the little problems that enter into it which I would like to bring to your attention concerning why some doctors have not sought independent data processing services, even though they are available.

Mr. TALCOTT. Do you have members or clients who operate interstate?

Mr. TESAURO. We service the automotive industry, so I would say that we have clients who are international.

Mr. TALCOTT. You also mentioned the possible large risks of providing incorrect data, even to the extent that some businesses could be bankrupted or put out of business. Are you required to have any professional licenses in any of the States?

Mr. TESAURO. I know of no State that requires a license of any kind to go into the data processing service business.

Mr. TALCOTT. With all of these businesses entering this very lucrative business, interstate in nature and with the tremendous risks that businessmen take in relying on their data, do you think that we may need some Federal regulations for your industry?

Mr. TESAURO. I would expect that if the public begins to be damaged in some way, over a period of time, the complaints would force Congress to consider legislation.

Mr. TALCOTT. Should we wait for actual damage if the risk is there?

Mr. MULTER. I would suggest that if we take this business out of banking, then regulation of the business may be a subject for the Interstate and Foreign Commerce Committee.

Mr. TALCOTT. If we take data processing out of banking, will we not have to have almost the same type of regulation for data processing that we have for bankers?

Mr. TESAURO. We as professionals would welcome some kind of criteria for qualifying people in the data processing business. I do want to correct you on one thing, Mr. Talcott. I know you did not really mean it when you said "This very lucrative business."

Mr. MULTER. We are not going to drum up any competition for you.

Dr. ROBINSON. It is just the reverse. It is an extremely tough business. Most of these little businessmen work 16 hours a day and then make very little profit. It is extremely tough, extremely competitive. It is unusually tough as a business.

Mr. MULTER. Thank you very much, gentlemen. You have been very helpful. Please get to us the additional data that you have been requested to supply as soon as possible.

Mr. Hering, will you come forward please with your associate? You may proceed and introduce yourself and the gentleman with you and you may read the statement or place it in the record and summarize it, as you please.

STATEMENT OF RAYMOND H. HERING, VICE PRESIDENT, INDUSTRY RELATIONS, AMERICAN SOCIETY OF TRAVEL AGENTS, INC.; ACCOMPANIED BY PAUL S. QUINN, WILKINSON, CRAGUN & BARKER, GENERAL COUNSEL FOR AMERICAN SOCIETY OF TRAVEL AGENTS

Mr. HERING. My name is Raymond H. Hering. I am vice president, industry relations, of the American Society of Travel Agents, Inc. (ASTA). I am accompanied today by Paul S. Quinn of the Washington law firm of Wilkinson, Cragun & Barker, general counsel for ASTA. ASTA is a trade association of professional travel agents throughout the United States and Canada. Our headquarters are at 360 Lexington Avenue in New York City. Currently, ASTA has more than 2,000 active travel agent members. Our members are predominantly small businessmen who depend almost exclusively on com-

missions earned from the sale of travel and related services for their income.

There are almost 6,000 travel agents in the United States today operating with the approval of the airline and steamship conferences. This approval is a prerequisite before a travel agent can sell airline and steamship tickets for compensation. This approval, in turn, can only be obtained after an applicant has satisfied the conference that he or his employees have the necessary work experience, background, and competency to establish and maintain a professional travel agency.¹

On behalf of these thousands of small businessmen throughout the country, Mr. Chairman, I am pleased and privileged to have the opportunity to appear here this morning and support your efforts to enact legislation which would prohibit national banks from engaging on a commercial basis in the travel agency business.

As you may recall, Mr. Chairman, ASTA had the privilege of participating in the hearings conducted by this subcommittee in February 1964 when the issue of nonbanking activities of national banks was last considered by the Congress. ASTA's policy at that time on banks in the travel business was clear and direct, and it remains unchanged today: Congress never intended that national banks should be allowed to engage in the commercial travel agency business. The Federal legislation under which banks operate in this country does not permit them to engage in the travel agency business. The Comptroller of the Currency, James J. Saxon, has illegally permitted—indeed encouraged—national banks to establish and maintain travel agency operations. Therefore, it is the responsibility of the Congress to enact legislation which makes it specifically clear that Congress did not and does not intend that national banks be allowed to compete unfairly from their privileged positions in the community with thousands of independent travel agents throughout the country.

In our testimony before this subcommittee in 1964, we set forth in detail the curious history which has surrounded the question of nonbanking activities of banks as it pertains to the travel agency business. I will not repeat in detail this history. However, I would like to call the subcommittee's attention to page 17 of the hearings held by this subcommittee during the 88th Congress on H.R. 9548 and H.R. 9822 on February 25 and 26, 1964.

I would like to take this opportunity, however, to restate certain conclusions which must be drawn from evidence previously made available to the subcommittee. During the last 8 years, we have seen the sorry spectacle of the Office of the Comptroller of the Currency issuing three completely diverse and inconsistent opinions on this issue of vital importance to our industry: (1) banks have "no legal right" to operate a "regular travel agency."² (2) Banks should determine for themselves whether their travel agency activities are permissible.³ (3) Banks may advertise, develop, and extend travel

¹ The Air Traffic Conference of America, under sec. IV-B 10 of Resolution 80.10, requires that one or more personnel of the applicant have at least 2 years' experience in the sales of passenger transportation or 2 years' employment in a sales capacity by a travel agency or 1 year's employment in a sales capacity by a certificated route airline.

² Rule 67, Comptroller of the Currency.

³ Letter from ex-Comptroller of the Currency Gidney dated Sept. 15, 1958.

services and "No restrictions should be placed upon the conduct of the travel agency business by national banks."⁴

The foregoing catalog of inconsistent rulings by the Comptroller of the Currency has eroded the traditionally accepted concept that the maintenance of commercial travel agency facilities as a method to entice and develop banking business was never intended by the Congress when it established the national banking system. This erosion has created a condition where national banks throughout the country are being encouraged to engage in the travel agency business on an unfairly competitive footing with independent travel agents and to entice away longstanding customers of such travel agents using all the financial power and prestige available to these institutions.

An even more serious effect has been created by these erroneous rulings of the Comptroller of the Currency. I refer, for example, to a recent development in the State of New York, where a report of the Advisory Committee on Commercial Bank Supervision submitted to the superintendent of banks of that State in December 1965, calls for an amendment to the State's banking laws to specifically permit New York State banks to offer travel and related services for compensation to all members of the general public. Legislation to accomplish this purpose is currently pending before both houses of the New York State Legislature. I would like to quote at this time from perhaps the most pertinent point made in this report: The present (State) law * * * denies the banks the ability to compete with national banks and other State-chartered banks in this expanding area.⁵

It is obvious from the foregoing statement that what the independent travel agent has feared for years has become a reality: First, national banks were encouraged by zealous proponents of "national banking progress at any price" to get national banks into the travel business at the expense of independent travel agents. Now, State-chartered banks that are complaining of being at a disadvantage by the improper activity of national banks are asking for State legislatures to authorize them to also improperly compete with independent travel agents. The net effect of this is that a nationwide industry responsible for producing more than \$2 billion in our country's economy is being made a pawn in the competitive race between National and State banks, institutions which never were intended by the Congress or State legislatures to engage in this unrelated activity.

Mr. Chairman, banks have long been recognized as being akin to public utilities as institutions established to serve certain specific legitimate purposes to further our national welfare. Indeed, the whole history of the national banking legislation dating back to the National Currency Act of 1863 on through to the Bank Service Corporation Act of October 1962, and leading up right up until February 21, 1966, when President Johnson approved Public Law 89-356, the so-called Bank Merger Act, recognized that banks are granted a privileged status in this country. This privileged status has given banks certain rights, immunities, and limitations consistent with the public interest. As is the case with all regulated industries enjoying such privileged

⁴ Letter of Comptroller of the Currency Saxon dated Feb. 16, 1962.

⁵ Report of the Advisory Committee on Commercial Bank Supervision, p. 22.

status, the exercise of these privileges must be carefully scrutinized. It is ASTA's opinion that even the most zealous proponent of bigger, more powerful, and more influential banks and banking should admit that there is an outer limitation beyond which banks should not be permitted to go in their efforts to build and broaden their financial operations. In ASTA's opinion, these outer limits have been reached and, in fact, exceeded by the current policy of the Comptroller of the Currency as it relates to the commercial operation of travel agencies by national banks.

There are many examples of the undesirable and impractical effects of banks being in the travel agency business. Right now in New York State, there is an effort to impose licensing requirements on all travel agencies including those run by national banks. If this legislation is enacted, the national banking system which Congress has regulated since this country was founded would then be subject to the jurisdiction of the State. This jurisdiction would spring—not from banks being in the banking business but because they are in the unrelated and separate travel agency business.

It is evident that the improper interpretation of the National Banking Act by the Comptroller of the Currency encouraging national banks to engage in the travel agency business has created tremendous hardships, inequities, and undesirable effects in the relationship between national banks and independent travel agents. This situation, in turn, is encouraging State legislatures and State banking systems to seek for themselves the opportunity to further unfairly compete with independent travel agents by the enactment of permissive legislation to counteract opinions of attorneys general and others throughout the country who have rightly concluded that banks have no business in the travel agency field.

Mr. Chairman, if this problem spreads, the entire existence of the independent travel agency industry may be at stake. The public interest requires action. The Comptroller of the Currency cannot and will not be reasoned with. The travel agency industry consists of small businessmen attempting to make a modest livelihood. They do not have the tremendous financial resources which would be necessary to litigate the invalidity of the Comptroller of the Currency's rulings on this matter. State legislators are currently considering matters which would further aggravate an already intolerable situation.

ASTA expresses no opinion on the merits of the legislation currently being considered by this subcommittee to regulate other non-banking interests of national banks. However, we respectfully request that the legislation which is pending be amended to prohibit national banks from engaging in the travel agency business. We, the spokesman for independent travel agents, look to this subcommittee and the Congress to initiate the necessary legislative reforms to crystallize what has been the apparent and logical attitude of the Congress throughout the history of this country: Banks belong in the banking business and not in the travel agency business.

Mr. MULTER. Thank you, Mr. Hering.

Your very last statement, however, contradicts the earlier statement, a few lines before that. If you are interested only in prohibiting the banks from competing with you and your business, why should not the bank be permitted to compete in other industries, stenographic service, dining room services, gasoline stations and leas-

ing of automobiles? Why should they engage in any and every business including yours?

Mr. QUINN. If I may, we took no position on the other areas because we do not feel we are qualified to determine the extent to which those activities become sufficiently distinct from banking and become improper. In other words, our expertise is confined to this point of the bank's travel agency activities. We have not—we certainly do not quarrel with your philosophy of limiting banks to the banking business.

Mr. MULTER. That is your concluding statement, that banks should be in the banking business?

Mr. QUINN. Yes, sir.

Mr. Grabowski?

Mr. GRABOWSKI. Have you got any argument other than the fact that they are going to put you out of business? Is this the only argument that the travel agencies have for not being in the travel agency business?

Mr. HERING. We do have other arguments to the fact that in many cases, we felt that the relationship of the bank to its depositors is akin to that of lawyer-client. Here is an area where many banks that get into the banking business, through mailing statements and promotional material, which as a travel agent they are required to do to promote travel, they are using their facilities to mail out documents on literature, their travel agency literature to depositors who are clients of travel agents. Those travel agents may be depositors in their own bank. I think there is a bit of conflict of interest in that relationship.

Mr. GRABOWSKI. That is all.

Mr. MULTER. Mr. Talcott?

Mr. TALCOTT. I am sorry, I did not know that you were going to be a witness today. But, do you have a definition of "travel agency business" that we could use in this bill? I am not certain what all is included in the travel agency business. Is not the writing of travel checks, for instance, part of your business that you would prohibit the banks from doing?

Mr. QUINN. If I may suggest this, the essential consideration for the committee, as far as the travel agency question is concerned is to obtain an appreciation of just how the industry functions, because as we see it, the travel agency industry is distinct and separate from a bank, even more so than some of the other problem areas. In order to facilitate that explanation we could make available to the committee copies of contracts that exist between the travel agent and the airlines which sets forth in detail the requirements and obligations that a travel agent has to meet before he can become approved. I believe that would answer the questions that you have and also give a sophisticated definition of just what a travel agent is.

Mr. MULTER. Do you have a similar contract with the steamship conference?

Mr. QUINN. Yes.

Mr. MULTER. Will you submit that, too?

Mr. QUINN. Yes.

(Following are copies of the contract which is entered into between the scheduled domestic airlines and U.S. travel agents and the contract which is used to govern the relationship between travel agents and steamship lines:)

**MEMORANDUM
OF
AIR TRAFFIC CONFERENCE
SALES AGENCY AGREEMENT**

THIS AGREEMENT, made and entered into this day of by and between the undersigned agent acting for the several air carriers which are parties to the Air Traffic Conference Agency Resolution (copies of which are on file and available for inspection at the offices of the Civil Aeronautics Board, Washington, D.C., the office of the Executive Secretary of the Air Traffic Conference of America, Washington, D.C., and the general offices of the air carriers which are members of the Air Traffic Conference of America),

and

.....
a
having its principal office at
..... (hereinafter called "the Agent").

WITNESSETH

That, for and in consideration of the mutual covenants and agreements therein contained, the parties hereto do hereby enter into and agree to be bound by the terms and conditions of the Air Traffic Conference Sales Agency Agreement (Form ATC-5A, 13th Rev.), a copy of which is attached to the Agent's copy hereof, and incorporated into and made a part of this Memorandum of Agreement.

IN WITNESS WHEREOF,

Witness:

..... acting as agent for the several air
carriers which are parties to the Air
Traffic Conference Resolution
.....

Witness:

..... Agent

By
(Name)
.....
(Title)

ATC COPY

**MEMORANDUM
OF
AIR TRAFFIC CONFERENCE
SALES AGENCY AGREEMENT**

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IN WITNESS WHEREOF,

Witness:

.....
.....
.....

.....
acting as agent for the several air
carriers which are parties to the Air
Traffic Conference Resolution

Witness:

.....
.....
.....

..... Agent

By
(Name)

.....
(Title)

AGENT'S COPY

AIR TRAFFIC CONFERENCE Sales Agency Agreement

1. Effectiveness:

This Agreement shall become effective as between the Agent and any individual air carrier, which is a party to the Air Traffic Conference Agency Resolution, only if such carrier (hereinafter called "the Carrier") delivers to the Agent a Certificate of Appointment, duly executed by or on behalf of the Carrier, authorizing the Agent to represent the Carrier subject to the terms and conditions of this Agreement.

The delivery of said Certificate of Appointment by the Carrier to the Agent shall be deemed a ratification and adoption of this Agreement by the Carrier and thereafter this Agreement shall have the same force and effect between the Carrier and the Agent as though they were both named herein and as though they had both subscribed their names hereto on the date appearing on said Certificate of Appointment.

2. Scope of Agent's Authority and Activities:

The authority of the Agent to represent the Carrier shall be specifically limited to the authority expressly granted by this Agreement.

During the term of this Agreement, the Agent shall represent the Carrier for the purpose of promoting and selling air passenger transportation offered by the Carrier. In selling such transportation, the Agent shall conform to and observe the tariffs, rules, regulations and instructions issued by the Carrier, and the applicable terms and conditions of tickets and exchange orders of the Carrier issued or used by the Agent. The Agent shall furnish information to its clients and the public concerning the Carrier's air passenger transportation services in conformance with current authorized forms, folders, advertising, schedules, tariffs, rules, regulations and instructions issued by the Carrier.

The Agent shall exercise the authority granted by this Agreement, and represent itself as an agent of the Carrier, only at or through such places of business operated by the Agent as are included from time to time on the ATC Agency List maintained pursuant to the ATC Agency Resolution.

The promotional and sales activities of the Agent on behalf of the Carrier shall not be restricted as to territory, except that, if such territory is at any time limited in writing by the Carrier, the Agent's activities shall be strictly confined within such limits. The Carrier may at any time appoint other agents, in addition to the Agent, in any territory for the purpose of promoting and selling air passenger transportation offered by it.

The Agent shall not sell or issue tickets or exchange orders covering air passenger transportation offered by the Carrier to persons who plan to sell, issue, or offer to sell or issue, such transportation documents, but who have not been authorized by the Carrier to represent the Carrier.

In selling air passenger transportation hereunder, the Agent shall use, in the following order of preference, the airline identification plate of air carriers which are parties to the Air Traffic Conference Agency Resolution:

- a. The Carrier through which the reservation is made, provided such Carrier participates in the routing, or
- b. The Carrier performing the first sector of the transportation, or
- c. If the Agent does not have either plate specified above, the plate of any Carrier which is scheduled to participate in the transportation, or
- d. If the Agent does not have any of the plates specified above, the Agent may use the plate of any other Carrier.

Any agent ticket delivery facility established, operated or maintained, directly or indirectly on the premises of any airport or within any airport terminal building may only be used for tickets actually issued at an authorized agency location and delivered to such facility by the Agent.

3. Designation of Agency:

The Agent may represent himself, on letterheads, advertising, telephone listings and classifications, office signs, and otherwise, as an "Agent" or "Travel Agent" representing the Carrier, but shall not represent himself as a "General Agent" or use any other designation (such as "Air Lines Ticket Office" or "Consolidated Air Lines Ticket Office") which would indicate or imply in any way that his office is an office of the Carrier.

4. Issuance of Tickets and Exchange Orders:

In selling air passenger transportation on the lines of the Carrier, the Agent shall issue only Standard Agent's tickets or exchange orders supplied pursuant to this Agreement, except to the extent the Carrier (1) authorizes the Agent, in writing, to draw its own exchange orders on the Carrier, (2) supplies the Agent with, and instructs the Agent to use, envelope-type exchange orders, or (3) the Carrier provides the Agent with supplies of its ticket forms or exchange orders and enters into a Special Supplemental Sales Agency Agreement covering the issuance and use thereof, or (4) the Carrier provides the Agent with supplies of its ticket forms or exchange orders for issuance pursuant to the IATA Passenger Sales Agency Agreement. The Agent shall deliver to its clients the proper forms of tickets or exchange orders as authorized from time to time by the Carrier; and routing information, et cetera, shown on any such documents shall be in accordance with the applicable rules, regulations and instructions furnished to the Agent by the Carrier.

Standard Agent's ticket forms or exchange orders for issuance to the Agent's clients to cover transportation purchased will be supplied to the Agent by the Executive Secretary of the Airline Finance and Accounting Conference (hereinafter called "Secretary-AFAC") as agent for the Carrier.

All ticket forms and exchange orders supplied by or on behalf of the Carrier to the Agent shall be held in trust by the Agent until issued to the Agent's clients to cover transportation purchased, or until otherwise satisfactorily accounted for to the Carrier, or to the Secretary-AFAC.

The Agent will procure, at no expense to the Carrier, one or more validator machine(s), or ticket writer(s), of a type approved by the Secretary-AFAC, for use at each place of business covered by this Agreement in the issuance of Standard Agent's tickets or exchange orders pursuant to instructions issued from time to time by the Carrier or the Secretary-AFAC.

The Carrier may, at its option, provide the Agent with one or more airline identification plate(s) for use in the issuance of tickets in said validator machine or ticket writer. Such airline identification plate shall remain the property of the Carrier, and shall be returned to it upon demand or upon the termination of this Agreement as between the Agent and the Carrier.

Ticket forms and exchange orders supplied by or on behalf of the Carrier for issuance at a specified place of business covered by this Agreement shall not be issued at or through any other place of business, nor shall an airline identification plate supplied for use at a specified place of business be used at any other place of business.

5. Collections and Remittances:

The Agent shall report and remit three times each month for all transportation or ancillary services sold hereunder (and for which the Agent has issued Standard Agent's tickets or exchange orders, or drawn exchange orders on the Carrier). The first such report shall include all such sales during the first ten days of the month, the second shall include all such sales during the

second ten days of the month, and the third shall include all such sales during the remaining days of the month. The report shall be on a form supplied by the Secretary-AFAC.

The Agent shall cause each such report, together with auditor's coupons, supporting documents and remittance, to be delivered to a bank designated by the Air Traffic Conference of America, not later than the close of banking hours on the fourth working day (i.e., excluding Saturdays, Sundays and federal and state legal holidays) following the last day of the period covered by the report: Provided, That the Agent shall be deemed to have complied with this requirement if the envelope containing the sales report, remittance and supporting documents is postmarked not later than midnight of the third working day.

If no transportation has been sold hereunder during any such period, the Agent shall, in lieu of a sales report, transmit a no sales report, on a form to be supplied by the Secretary-AFAC, to the designated bank.

The sales report shall account, in such manner as may be prescribed from time to time by the Carrier or by the Secretary-AFAC, for all sums due the Carrier hereunder, and for all transportation receipts and other required documents accepted by the Agent in payment for air transportation sold hereunder (and for which the Agent has issued Standard Agent's tickets or exchange orders, or has drawn exchange orders on the Carrier) pursuant to the Universal Air Travel Plan.

The Agent shall retain his duplicate copy of each sales report and his copies of supporting documents, for at least two years.

Remittances of moneys shall be made in official currency of the country in which the Agent is located, or its equivalent, unless otherwise instructed in writing by the Executive Secretary. If remittance is made by the Agent's check, the check shall be made payable in accordance with the instructions given from time to time by the Executive Secretary.

All moneys, less applicable commissions to which the Agent is entitled hereunder, collected by the Agent for air passenger transportation or ancillary services sold hereunder (and for which the Agent has issued Standard Agent's tickets or exchange orders or has drawn exchange orders on the Carrier) and all transportation receipts and other required documents accepted by the Agent in payment for air passenger transportation or ancillary services sold hereunder (and for which the Agent has issued Standard Agent's tickets or exchange orders or has drawn exchange orders on the Carrier) pursuant to the Universal Air Travel Plan, shall be the property of the Carrier, and shall be held in trust by the Agent until satisfactorily accounted for to the Carrier. The Agent shall, if so requested in writing by the Carrier, procure and maintain, or cause to be procured and maintained, for the benefit of the Carrier and without expense to the Carrier or the Air Traffic Conference of America, a bond or bonds providing such coverage, and in such amounts, as shall be satisfactory to the carrier.

The books and records of the Agent relating to the sale of transportation offered by the Carrier shall be open to inspection by the Carrier and/or an auditor or other duly authorized representative of the Air Traffic Conference of America.

5.A. Maintenance of Bond (Not Applicable in Canada):

The Agent shall, without expense to the Carrier or the Air Traffic Conference of America, procure and maintain, or cause to be procured and maintained, for the joint and several benefit of the members of the Air Traffic Conference of America, a bond or bonds, conditioned upon the Agent's compliance with the provisions of this Agreement with respect to remittances to the Carrier, in a form prescribed from time to time by the Agency Committee of said Conference in the minimum amount of \$10,000, such amount to be increased whenever necessary to cover the average of the three highest months (of the last 12) gross sales of air transportation for the accounts of members of the Air Traffic Conference: Provided, That, (a) the Agent shall not be required to

maintain said bond in an amount in excess of \$50,000; (b) the Agent shall be relieved of the requirement to provide coverage in excess of the \$10,000 minimum if:

1. the Agent is determined by the Executive Secretary to be a "Bank Travel Department" within the meaning of the Air Traffic Conference Agency Resolution, or
2. the Agent submits to the Executive Secretary annually a current balance sheet, certified by a certified public accountant to present fairly the financial position of the Agent, which establishes that total assets available for satisfaction of debts exceed liabilities by at least \$75,000, and the credit rating of the Agent, if published by Dun and Bradstreet or other recognized credit-rating agency, is shown as "good" or higher;

and (c) after the Agent has been on the Air Traffic Conference Agency List for one year, adjustment of the amount of the bond to provide coverage in excess of the \$10,000 minimum shall be made at least once a year, and at any other time when the amount of the Agent's bond falls by \$2,000 or more to provide adequate coverage. Nothing herein shall be deemed to preclude an agent from reducing the amount of coverage whenever consideration of his sales experience for the most recent twelve consecutive months shows him to be carrying a bond in excess of that herein required.

6. Misrepresentation as to Routing, et cetera:

The Agent shall not make any misrepresentation as to the Carrier, aircraft, or route by which any passenger is to be transported, nor as to any service to be furnished by the Carrier.

7. Securing of Accommodations:

The Agent shall request reservations of accommodations only when the Agent has had a request to do so from a client and, if so required by the Carrier, when a deposit therefor in the proper amount has been paid to the Agent by the client. The Agent shall secure confirmation from the Carrier that a definite reservation has been made before issuance to the client of a ticket or exchange order for any particular flight or flights; except that, unless otherwise instructed by the Carrier, an exchange order may be issued to a client covering "open date" transportation, or a ticket may be so issued which includes an "open date" portion or portions for which no accommodations have been reserved at the time of issuance to the client, provided such forms are properly marked to indicate "open date" issuance in accordance with current instructions of the Carrier.

8. Remuneration—Commission:

As remuneration for the services performed by the Agent hereunder, the Carrier agrees, subject to the limitations set forth in this Agreement, to pay the Agent as commission a percentage (as set forth in Schedule A attached hereto and made a part hereof) of the fares and charges applicable to the air passenger transportation offered by the Carrier which is sold by the Agent hereunder. Such commission shall be accepted by the Agent as full compensation for its services rendered to the Carrier hereunder. No commission will be paid to the Agent for the sale of any air passenger transportation unless (1) such Agent issued a ticket or an exchange order covering the air passenger transportation for the sale of which the commission is paid, and (2) such Agent collected the proper amount of fares and charges applicable to such transportation or procured a properly executed transportation receipt and other documents as required pursuant to the Universal Air Travel Plan.

The Agent shall not be entitled to a commission for the sale of any air passenger transportation, and shall refund any commission previously paid or retained in connection with such sale, unless the passenger is actually transported by the Carrier to a point other than that at which he embarks; except that, where the terms of sale of the transportation provide for a return to the point of embarkation without landing at any other point, the Agent shall be entitled to a commission if the passenger is actually transported in accordance with such terms.

In cases of cancellation by the Agent's client of any portion of the transportation sold by the Agent and for which the Agent has issued a ticket or exchange order supplied by or on behalf of

the Carrier or has drawn an exchange order on the Carrier, the Agent shall not be entitled to a commission for the sale of the portion so cancelled, and shall, on demand of the Carrier, refund any commission previously paid or retained in connection with such sale. Any moneys withheld by the Agent as commissions from remittances due the Carrier hereunder, pursuant to Paragraph 5 of this Agreement, shall remain the property of the Carrier, and shall be held in trust by the Agent until the transportation to which the commissions relate has been completed.

No commission will be paid to the Agent for the sale of any air passenger transportation for which the Agent issues a ticket (or portion thereof) or exchange order in violation of any provisions of this Agreement.

No commission will be paid to the Agent for the sale of any air passenger transportation, exclusively between points in the Continental United States and/or Canada, which is paid for under the Universal Air Travel Plan; *Provided*, That if such Plan is entered after the sale was made, a commission will be paid on such sale as if no such Plan had been entered into; and *Provided, Further*, That nothing herein shall prohibit payment of commission at the regular tour rate on the tariff fares and charges applicable to the domestic air passenger transportation included in an Advertised Air Tour or Independent Air Tour. No commission will be paid to the Agent for the sale of any air passenger transportation paid for by Government travel voucher, warrant, or similar Government purchase contract.

No commission will be paid to the Agent for the sale of any air passenger transportation for which the Agent issues a ticket or exchange order

- (1) to any person who has a financial interest in the Agent, or
- (2) to any officer or employee of the Agent, or
- (3) to any officer or employee of any entity or person which owns, controls or has a financial interest in the Agent:

Provided, That this subparagraph shall not preclude payment of commission because of a financial interest arising from investment in an Agent which is an entity whose shares are listed on a securities exchange or are regularly traded in an over-the-counter market; and *Provided, Further*, That this subparagraph shall not preclude payment of commission in those cases where an employee of the Agent purchases transportation for his own personal use, e.g., a vacation.

9. Communications:

The Carrier will not accept collect telegrams or telephone calls from the Agent for any purpose, nor will the Carrier assume or pay any telephone, telegraph, mailing, printing or other communications, advertising or promotional expense of the Agent for any purpose. The Carrier will, however, prepay reservation confirmation messages to the Agent.

10. Refunds:

The Agent may refund any fare or charge applicable to air transportation sold by the Agent hereunder and for which the Agent has issued a ticket or exchange order supplied by or on behalf of the Carrier. The Agent, shall make refund only to the person authorized to receive the refund and in accordance with the tariffs, rules, regulations and instructions issued by the Carrier, and shall not assess or withhold from the refund payee any amount as a service charge or otherwise. The Agent hereby agrees to indemnify and hold the Carrier harmless from and against any claim arising from the failure of the Agent to refund promptly to the authorized refund payee the proper amount of fare or other charge. If the amount refundable was collected by the Agent and remitted to the Carrier prior to making the refund, the Carrier shall reimburse the Agent the amount of such refund upon receipt of the Agent's written statement that the refund has been paid.

11. Commissions Not to Be Divided:

The Agent shall retain the full amount of the commissions allowed by the Carrier unless an authorized traffic official of the Carrier authorizes the Agent in writing to pay a portion of its commissions to a sub-agent, and such sub-agent is included on the Air Traffic Conference Agency List. The Agent shall not rebate or promise to rebate, directly or indirectly in any manner whatsoever, the commissions or any portion thereof, granted to the Agent by the Carrier, to any passenger or client.

12. Free or Reduced Rate Transportation Furnished to Agent Not Transferable:

The Agent shall not resell or otherwise transfer any ticket or other document entitling him, or any of his officers or employees, to air passenger transportation offered by the Carrier if such ticket or document has been furnished to the Agent without charge or at a reduced rate.

13. Compliance with Tariffs, Rules, Regulations and Instructions:

The Agent shall comply with all instructions of the Carrier, including any specific instructions applying to any particular case or circumstances, and shall make no representation or statement not previously authorized by the Carrier. The Agent shall deliver to the Carrier such specific instructions, requests, or particulars in connection with a client or his transportation as may be proper to enable the Carrier to render efficient service to its passengers. The Agent also agrees to adhere to and to comply with the tariffs, rules, and regulations of the Carriers.

14. Advertising and Publicizing the Carrier's Services:

In carrying out the services specified hereunder and within the limitations hereof, the Agent shall make known the services of the Carrier in every way reasonably practicable. However, samples of all advertising matter to be issued by and at the expense of the Agent, in which reference is made to the Carrier, shall be approved by the Carrier prior to display or distribution thereof.

The Carrier shall furnish the Agent with timetables, schedules of fares, and other information and instructions, including advertising and publicity matter, which the Carrier customarily supplies to its Agents, and the Agent shall make effective use thereof in publicizing the services of the Carrier.

15. Default:

If at any time the Agent is in default to the Carrier or to any other party to the Air Traffic Conference Agency Resolution, the Carrier, at its option, may either terminate this Agreement, as between it and the Agent, by notice in writing to the Agent, such notice to take effect immediately upon its receipt, or may, for such periods as it deems advisable, withdraw its airline identification plate from the Agent and revoke any authorization previously given to the Agent to draw its own exchange orders on the Carrier, and the Secretary-AFAC may, for such periods as he deems advisable, withdraw all Standard Agent's ticket forms and exchange orders supplied to the Agent.

16. Adequate Amount of Business:

The Agent shall endeavor to create and stimulate the sale of air passenger transportation offered by the Carrier, to perform and provide adequate service to the Agent's clients, and to transact a sufficient amount of business to justify the costs and responsibilities incurred by the Carrier in retaining the agency. The failure or inability of the Agent to produce an amount of business sufficient to justify the continuance of the agency may result in its termination at any time by the Carrier.

17. Maintenance of Ethical Business Standards:

The Agent shall at all times maintain ethical standards of business in the conduct of the agency and in its dealing with its clients, the public and the Carrier.

18. Liability:

The Carrier hereby agrees to indemnify and hold harmless the Agent, its officers, agents and employees from all responsibility and liability for any damage, expense, or loss to any person or thing caused by or arising from any negligent act or omission of the Carrier, its representatives, agents, employees, or servants, and related directly or indirectly to any transportation sold by the Agent hereunder and performed, or to be performed, by the Carrier. The Agent likewise agrees to indemnify and hold harmless the Carrier, its officers, agents and employees from all responsibility and liability for any damage, expense, or loss to any person or thing caused by or arising from any negligent act, omission, or misrepresentation of the Agent, its representatives, agents, employees, or servants. The Agent further agrees to indemnify and hold harmless the Carrier, its officers, agents and employees, from any and all damage, expense, or loss on account of the loss, misapplication, theft, or forgery of tickets, exchange orders, or other supplies furnished by or on behalf of the Carrier to the Agent, or the proceeds thereof, whether or not such proceeds have been deposited in a bank, and whether or not such loss is occasioned by the insolvency of either a purchaser of such forms or documents or of a bank in which the Agent may have deposited such proceeds, and notwithstanding the fact that, under the terms of this Agreement, such proceeds are the property of the Carrier and held in trust by the Agent.

19. Notices:

All notices to the Agent or to the Carrier shall be sufficient if sent by prepaid telegram or mail, addressed as each party may designate in writing during the term of this Agreement.

20. Agency Fees:

The Agent shall pay to the Executive Secretary of the Air Traffic Conference of America, on or before January 10 of each year, an annual fee in the amount prescribed by the said Conference for each place of business designated by any party to the Air Traffic Conference Agency Resolution as provided in Paragraph 2 of this Agreement.

The Agent shall pay to the said Executive Secretary, upon execution of this Agreement, an initial fee which bears the same relation to the amount of the annual fee payable hereunder as the portion of the calendar year remaining after the date of the announcement by the Executive Secretary of the receipt of the Agent's application bears to a full calendar year: *Provided*, That if this Agreement is executed during the month of December, no such initial fee shall be payable.

In the event of termination of this Agreement as between the Agent and each party to the Air Traffic Conference Agency Resolution which has delivered a Certificate of Appointment to the Agent, the last fee paid by the Agent under this Agreement shall be prorated as of the date of such termination and the portion applicable to the period after such termination will be refunded to the Agent.

In the event the designation of any place of business is terminated by all parties to the Air Traffic Conference Agency Resolution which have designated such place of business as provided in Paragraph 2 hereof, the portion of the fee last paid by the Agent attributable to such place of business shall be prorated on the same basis, and an appropriate refund made to the Agent.

21. Agency Bond:

The Agent shall be acceptable to the bonding company for coverage under such bond, and for such amount, as may be required by the Agency Committee of the Air Traffic Conference of

America. Failure to so qualify shall immediately terminate this Agreement as between the Agent and all parties to the Air Traffic Conference Agency Resolution.

22. Transfer, Assignment, or Change of Name or Address:

The name or names under which the activities of the Agent are conducted, or under which any of its offices are operated, shall be only such as are set forth in this Agreement, and such name or names shall not be changed except upon thirty (30) days advance written notice to the Executive Secretary of the Air Traffic Conference: *Provided*, That if within such thirty (30) days period the Executive Secretary notifies the Agent that the proposed name or names would violate Paragraph 3 of this Agreement, the change of name shall not be made.

The location of any place of business covered by this Agreement shall not be changed except upon thirty (30) days advance written notice to the Executive Secretary of the Air Traffic Conference, accompanied by evidence, satisfactory to the Executive Secretary, the new location qualifies under the terms of the ATC Agency Resolution: *Provided*, That if within such thirty (30) day period the Executive Secretary notifies the Agent that such evidence is not satisfactory, the Agent may nevertheless change the location subject to determination by the ATC Agency Committee at its next regular meeting, as to whether the location is qualified.

This Agreement shall not be assignable or otherwise transferable by the Agent except with the consent of the ATC Agency Committee, provided that temporary consent to the assignment or transfer, pending action by the Committee, may be given by the Executive Secretary of the Air Traffic Conference upon receipt of an application, in a form prescribed by the ATC Agency Committee, setting forth information with respect to the assignee or transferee, his financial status, and other matters bearing on his qualifications.

With respect to any place of business, covered by this Agreement, which is located in Canada, the written notice of change of name or location, pursuant to the first two subparagraphs of this paragraph, or the application for transfer or assignment, pursuant to the third subparagraph of this paragraph, shall be submitted to the Executive Secretary through a Carrier.

23. Other Agreements Superseded:

This Agreement shall supersede any and all prior agreements between the Agent and any party to the Air Traffic Conference Agency Resolution concerning the sale of air passenger transportation offered by any such party, except with respect to rights and liabilities existing at the date hereof.

24. Termination:

This Agreement may be terminated as between the Agent and the Carrier, at any time by notice in writing from either to the other, such notice to take effect immediately upon its receipt, subject to the fulfillment by each of all obligations accrued prior to the receipt of such notice. This Agreement may be terminated as between the Agent and all parties to the Air Traffic Conference Agency Resolution, at any time by notice in writing from the Agent to the Executive Secretary of the Air Traffic Conference of America, or from the Executive Secretary of the said Conference (or his authorized representative) to the Agent, such notice to take effect immediately upon its receipt, subject to the fulfillment, by the Agent, and by each party to the said Resolution which has delivered a Certificate of Appointment to the Agent of all obligations accrued prior to the receipt of such notice. Upon termination of this Agreement as between the Agent and the Carrier, the airline identification plate shall immediately be returned to the Carrier, together with all moneys due and payable to the Carrier hereunder, and a complete and satisfactory accounting rendered. Upon termination of this Agreement as between the Agent and parties to the Air Traffic Conference Agency Resolution, all unused Standard Agent's ticket forms and exchange orders shall immediately be returned to the Secretary-AFAC and all airline identification plates shall immediately be re-

turned to the Carrier, together with all moneys due and payable to the Carrier hereunder, and a complete and satisfactory accounting rendered.

25. Rights, etc. of Air Carriers Several:

The rights, powers, privileges, immunities, and duties under this Agreement, of the air carriers which are parties to the Air Traffic Conference Agency Resolution shall be several and not joint.

26. Subject to Carrier's Obligations, etc., under Air Traffic Conference Agency Resolution:

The Agent recognizes that the Carrier is party to the Air Traffic Conference Agency Resolution and as such is entitled to certain rights and is subject to certain obligations under the provisions of said Resolution. The Agent further recognizes that this Agreement is entered into for an indefinite period and that it may be terminated at any time by the Carrier, as provided in Paragraph 24 hereof, for any reason which is deemed sufficient by the Carrier, and that the Carrier is under no obligation to justify such termination. The Agent agrees that this Agreement and the rights and obligations of the parties hereto are subject to the said Air Traffic Conference Agency Resolution and the rights and obligations of the Carrier thereunder, and that the Agent shall have no recourse against the Carrier, or the Air Traffic Conference of America, or any member of the Air Traffic Conference of America, or against any officer, employee, agent or servant of any of them, by reason of any action taken in accordance with the provisions of the said Resolution, or by any reason of any termination of this Agreement in accordance with its provisions.

27. Arbitration: (Not applicable in Canada)

Any claim or controversy arising out of, or relating to, termination of this Agreement by reason of action of the Agency Committee of the Air Traffic Conference of America under Paragraph I of Section IV of the Conference's Agency Resolution shall be settled by arbitration on the following terms and conditions:

- a. *Selection of Arbiters:* Within 15 days after receipt by Agent of notice from the Executive Secretary of the Air Traffic Conference that he has been removed from the Agency List, and this Agreement accordingly terminated, the Agent shall notify the Executive Secretary by registered mail if he desires to have such removal reviewed by an arbitral tribunal and shall, at the same time, name one arbiter acceptable to the Agent. Such notice shall enclose the amount of \$100.00 as a deposit toward the Agent's share of the expenses of arbitration. Within 10 days after receipt of such notice from Agent, the Executive Secretary shall name an arbiter acceptable to the Executive Secretary, notifying Agent by registered mail of the person so selected. Within 20 days after mailing of such notice by the Executive Secretary, the two arbiters so selected shall designate a third, who shall serve as chairman of the tribunal. If such third arbiter shall not have been designated within 90 days after date of mailing by the Executive Secretary of notice that the Agent has been removed, such third arbiter shall be designated by the American Arbitration Association.
- b. *Conduct of Proceedings:* The tribunal so selected shall set the matter down for hearing not later than 30 days after selection of the chairman and shall notify the Executive Secretary and the Agent of the time and place of such hearing by registered mail: *Provided*, That at the request of the Agent the date of hearing may be postponed until after the next meeting of the Committee so as to permit it to reconsider his removal from the Agency List. In the conduct of proceedings before the tribunal, the rules and procedures of the American Arbitration Association, insofar as they are applicable, and not in conflict with Civil Aeronautics Board Order No. E-14012, June 10, 1959, shall govern. The decision of a majority of the arbiters shall be final and binding upon the Agent and the parties

to the Air Traffic Conference Agency Resolution. The expenses of arbitration, including any fees payable to the arbiters, shall be shared equally by the Agent and the Conference.

- c. *Scope of Arbitral Tribunal's Review:* The arbitral tribunal shall receive any probative evidence bearing on the qualifications of the Agent, shall determine whether the evidence demonstrates the Agent to be qualified or unqualified for retention on the Agency List, and shall direct action upon the application accordingly.
- d. *Status Pending Arbitration:* Upon or prior to notifying the Executive Secretary that he demands arbitration, the Agent shall surrender the airline identification plates to each party to the Air Traffic Conference Agency Resolution and to the Secretary-AFAC all Standard Agent's ticket forms and exchange orders supplied to the Agent, unless he posts with the Executive Secretary a bond (or a supplement to any pre-existing bond furnished under Paragraph 5A hereof), in an amount not less than the Agent's highest sales of air transportation commissionable hereunder in any one of the 12 preceding calendar months, expressly conditioned upon remittance in full, less applicable commission, during the pendency of arbitration, and upon holding harmless each carrier from any liability it might incur to Agent's customers by reason of Agent's failure to deliver tickets paid for, or refund payments made, during the pendency of arbitration. During the pendency of such arbitration, Agent may continue to sell air transportation in accordance with the terms and conditions of this Agreement. If the Agent posts the bond hereinabove referred to, the Secretary-AFAC shall continue to supply Agent with Standard Agent's ticket forms and exchange orders, and each Carrier which had supplied the Agent with airline identification plates prior to cancellation shall continue to supply him with such plates, and said remittance shall be made in accordance with the procedures prescribed in Paragraph 5 hereof. If the Agent does not post said bond, remittance shall be made in full, without deduction of commissions, for such transportation prior to or upon the issuance of tickets, through the use of envelope-type Air Transportation Exchange Orders or such other arrangements as may be agreed upon, and, if the arbitral tribunal directs reinstatement of Agent, or if the Agency Committee of the Conference reinstates such Agent prior to issuance of the arbiters' decision, he shall be entitled to, and each Carrier shall promptly remit to him, commissions at the rates set forth herein for transportation sold by him during the pendency of arbitration, but in no other circumstances shall Agent be entitled to, or receive, commissions from any such Carrier for transportation sold during the pendency of arbitration.

28. Waiver of Libel by Reason of Notice of Reasons for Review or Removal from Agency List

The Agent recognizes that the Agency Committee of the Air Traffic Conference has been directed by the Civil Aeronautics Board, in its Order No. E-14012, June 10, 1959, to record and give notice to the Agent of its reasons for disapproving the Agent in the event it determines, after review of his eligibility, to remove him from the Agency List, and also to give Agents upon whom review is requested for violations or other charges notice thereof. The Agent hereby expressly waives any and all claims, causes of action, or rights to recovery based upon libel, slander or defamation of character by reason of such publication of asserted grounds or reasons for removal from the Agency List, or of alleged violations or other charges for which review of the Agent's eligibility is requested, as is reasonably related to the performance of appropriate functions specified in applicable Air Traffic Conference Resolutions.

SCHEDULE A

RATES OF COMMISSION

1. For the sale of any Advertised Air Tour, ten percent (10%) of the tariff fares and charges applicable to the domestic air passenger transportation offered by the Carrier included in such tour; *Provided*, That prior to the date on which such Tour is offered for sale to the public, such Tour has been filed with and approved by the party to the Air Traffic Conference Agency Resolution pursuant to said Resolution as it may be amended from time to time.

2. For the sale of any Independent Air Tour, ten percent (10%) of the tariff fares and charges applicable to the domestic air passenger transportation offered by the Carrier included in such Tour; *Provided*, That—

- (a) The Agent has established to the satisfaction of the Carrier (i) that he has, by advertising and other promotion, made substantial efforts to promote the sale of Independent or Advertised Air Tours; and (ii) that he has regularly advertised and demonstrated his ability and willingness to arrange and sell, Independent or Advertised Air Tours;
- (b) The Agent has filed with the Carrier an Agent's Air Tour Report on forms supplied by the Carrier; and
- (c) All passenger tickets and/or exchange orders are marked with the code "IT".

3. For the sale of any Incentive Air Tour, ten percent (10%) of the tariff fares and charges applicable to the domestic air passenger transportation offered by the Carrier included in such Tour; *Provided*, That—

- (a) The Agent has established to the satisfaction of the Carrier (i) that he has, by advertising and other promotion, made substantial efforts to promote the sale of Incentive Air Tours; and (ii) that he has regularly advertised and demonstrated his ability and willingness to arrange and sell, Incentive Air Tours;
- (b) The Agent has filed with the Carrier an Agent's Air Tour Report on forms supplied by the Carrier, together with promotional literature, supported by a statement that the transportation sold "was offered as a prize"; and
- (c) All passenger tickets and/or exchange orders are marked with the code "IT".

4. For the sale of any through ticket covering air passenger transportation between a point within the Continental United States or Canada and a point outside of either such area, or between two points (other than points in Hawaii) outside of either such area, which is not included in an Independent, Advertised, or Incentive Air Tour, seven percent (7%) of the tariff fares and charges applicable to the domestic air passenger transportation offered by the carrier covered by such ticket.

5. For the sale of any charter flight to be operated by the Carrier, five percent (5%) on the actual transportation mileage charges only (or on minimum tariff charges assessed in lieu of such transportation mileage charges), and not on any ferry mileage charges, landing charges, layover charges, or other accessorial charges involved in the computation of the total charter rate.

6. For the sale of any other domestic air passenger transportation offered by the Carrier, five percent (5%) of the tariff fares and charges applicable to such transportation: *Provided*, That the commission payable for the sale of any transportation on a sightseeing flight only shall not be less than twenty-five cents (25¢) per passenger.

DEFINITIONS

For the purpose of this Schedule A—

1. The term "Advertised Air Tour" means a prepaid package tour arranged, advertised and offered for sale to the public in conformity with the provisions of the Air Traffic Conference Agency Resolution, as such Resolution may be amended from time to time.
2. The term "Independent Air Tour" means a prepaid tour featuring at least two non-contiguous cities or localities within the Continental United States, Hawaii and/or Canada (1) which consists of a round trip or circle trip, wholly or in part over the lines of the carrier, plus at least the following services and accommodations (in addition to those covered by the tariff fares and charges applicable to the air passenger transportation) which are furnished to the passenger upon presentation of coupons supplied him by the Agent: (a) overnight lodging in at least two non-contiguous cities or localities (two or more nights aboard a cruise steamer as a prepaid cruise passenger satisfies this requirement); and (b) specially provided local transportation; or the services of guides or escorts; or sightseeing trips; or other similar tourist services: *Provided*, (A) That the portion of the price applicable to such services and accommodations furnished each passenger amounts to at least fifteen dollars (\$15.00) if the tariff fares and charges applicable to the air passenger transportation furnished by all carriers which are parties to the Air Traffic Conference Agency Resolution are seventy-five dollars (\$75.00) or less; (B) That such portion amounts to at least twenty percent (20%) of such tariff fares and charges if such tariff fares and charges are more than seventy-five dollars (\$75.00) and less than one hundred and seventy-five dollars (\$175.00); and (C) That such portion amounts to at least thirty-five dollars (\$35.00) if such tariff fares and charges are one hundred seventy-five dollars (\$175.00) or more; (2) which is sold at a price which covers at least the minimum requirements which shall be prepaid in full by the purchaser; and (3) all of the arrangements for which are made by the Agent prior to the passenger's departure from his point of origin; *Provided, Further*, That a tour, otherwise qualifying as an Independent Air Tour, originating in the Continental United States or Canada need feature only a single city or locality within Hawaii.
3. The term "Incentive Air Tour" means a journey involving a round or circle trip in whole or in part over the lines of one or more Members which is promoted in literature and which also includes living accommodations for a minimum of two nights and specially provided local transportation; or the services of guides or escorts; or sightseeing trips; or other similar tourist services, the cost of which has been prepaid in full prior to commencement of travel, which is offered as a prize. The promotional literature shall be printed or mimeographed (or produced by some similar process) and may, but need not, qualify under Agency Resolution 80.10, Section XII.
4. The term "Continental United States" includes only the area within the forty-eight states and the District of Columbia.
5. The term "domestic air passenger transportation" means air passenger transportation, furnished by one or more Members, between points within the Continental United States, between such points and Hawaii (including transportation between points within Hawaii) and/or between the Continental United States and Canada and between points in Canada only when air transportation is via a point in the United States; or a flight which takes off from and returns to a point within the Continental United States or Hawaii.

DUPLICATE

SUB-AGENCY APPOINTMENT AGREEMENT

Expires April 15, 19 , unless renewed by Steamship Company

HAMBURG-ATLANTIK LINIE G. m. b. H.

(Hamburg-Atlantic Line)

I (we) hereby apply for a sub-agency of

(Name of Steamship Company)

to be located at

(Street and Number)

(City or Town)

(State)

and in the event of my (our) appointment, or reappointment and in consideration thereof, agree to adhere to and comply with all the instructions from and the rules which are hereto annexed governing the activities of sub-agencies of said Steamship Company, and which I (we) have read and hereby agree to, and all additional or supplemental rules for or requirements of sub-agencies hereafter issued by said Steamship Company, including any special instructions applying to any particular case or circumstances, and I (we) also agree to hold in trust for said Steamship Company any steamship passage tickets and orders, railroad tickets and orders, money orders, drafts, travelers checks or other documents and forms supplied to me (us) for sale, and to sell the same only at the rates quoted by said Steamship Company, and when any of such documents or forms are sold I (we) agree to keep and hold the proceeds of sale and also any deposits made on account of any sales and any other funds received or collected for the account of said Steamship Company, whether or not the same have been deposited in a bank, in trust and entirely separate and apart from any and all other funds and moneys in my (our) hands, and to remit such proceeds of sale to said Steamship Company immediately after each sale, and all deposits and other funds immediately after their receipt; and I (we) further agree to return to said Steamship Company upon demand all of its unsold tickets, orders and other documents and forms and also any certificate or other written authorization of agency appointment issued to me (us).

I (we) further agree that the relationship set up between me (us) and said Steamship Company is not that of debtor and creditor but of trustee and beneficiary, and that all funds derived from the sale of said Steamship Company's tickets, orders and other documents or forms, and also any deposits and any other funds received or collected for the account of said Steamship Company, are said Steamship Company's property and do not belong to me (us).

In consideration of the granting of this sub-agency, I (we) not only represent and warrant that I (we) shall at all times safeguard and protect the property and money of said Steamship Company in the manner aforesaid, but I (we) add my (our) personal indemnity to said Steamship Company for any loss which may be sustained by it for any of the causes hereinafter mentioned in this paragraph, apart from and in addition to any and all rights and remedies hereunder which said Steamship Company has by virtue of the creation of the aforesaid trust relationships and to that end I (we) further agree to accept responsibility and liability for each steamship passage ticket and order, railroad ticket and order, deposit receipt, money order, draft, travelers check or other document or form delivered to me (us) and for all funds and moneys received by me (us) as proceeds of sale of any of such documents or forms, or as deposits or for the account of said Steamship Company, and to indemnify and save the said Steamship Company harmless from loss for such documents and forms and for such proceeds of sale, deposits and funds, whether or not the same have been deposited in a bank and whether such loss is occasioned by forgery, burglary or theft or by the insolvency of either a purchaser of such documents or forms or of a bank in which I (we) may have deposited such proceeds of sale, deposits or funds (notwithstanding the fact that under the terms of this trust agreement such bank deposits are the property of said Steamship Company and not my (our) property), or by any other act or condition whatsoever.

I (we) further agree not to transfer or sell the sub-agency appointment of said Steamship Company or to change the name or the address of the sub-agency without the prior written consent of said Steamship Company and to report without delay any change that may affect my (our) sub-agency.

I (we) further agree that under any plan for the bonding of the sub-agency and/or for the payment of a fee by the sub-agency which said Steamship Company may arrange, this appointment shall not become nor remain effective unless and until any forms necessary or any acts required of me (us) in connection with such bonding and/or sub-agency fee arrangements have been executed or performed by me (us) and are acceptable to said Steamship Company.

No modification of the terms of this Trust Agreement shall be effective unless made in writing and signed by both parties.

I (we) further agree that if this application for appointment as a sub-agency is granted, said appointment may be withdrawn by said Steamship Company at any time after ten days from the date hereof and without previous notice, and shall in any event expire not later than April 15, 1960, unless prior to such expiration said Steamship Company shall, in writing, renew my (our) appointment for a further period of one year under the same or under other terms and conditions, and thereafter from year to year in the same manner, no appointment being effective for a longer period than until the fifteenth day of April next after the date of such appointment unless a contrary intention is clearly and affirmatively expressed on the face of the written renewal of such appointment.

Any failure by said Steamship Company to avail itself of or act upon any default on my (our) part for any of my (our) acts or omissions in violation of the terms and conditions hereof, unless agreed to in writing by said Steamship Company, shall not be deemed a waiver by said Steamship Company, nor a general waiver of any such acts or omissions; and a waiver by said Steamship Company in respect of one or any number of acts or omissions by me (us) shall not be deemed to operate as a relinquishment of any rights against me (us) or a waiver in respect of any acts or omissions by me (us) subsequently occurring.

(Witness of Applicant's Signature)

(Name of Applicant)

(Full Address)

By

(Title)

(Date)

(Date)

The above application for a sub-agency of the Steamship Company named below is hereby approved, subject to all of the terms and conditions referred to therein, including the rules thereto annexed:

HAMBURG-ATLANTIK LINIE G. m. b. H.

(Hamburg-Atlantic Line)

(Name of Steamship Company)

(Date) September 28, 1959

By

District Manager, Home Lines Agency Inc

TRANS-ATLANTIC PASSENGER CONFERENCE

Rules Governing the Activities of Sub-Agencies in North America

Adopted by the Steamship Lines, members of the Trans-Atlantic Passenger Conference.

These Rules cover the services of each of the member Lines and relate to all classes of bookings. They must be strictly complied with in the spirit as well as the letter, and a violation of any Rule or default in the performance of any provision thereof, with respect to any one of such Lines, may result in the cancellation of the agency by all of such Lines which it represents.

1. Definition of Agent

The term "agent," wherever mentioned in these Rules, means an individual, firm or corporation employed by the Line, either directly or through its General Agent, as a sub-agent for the sale of steamship passage tickets, and/or orders, and/or railroad tickets and/or orders, and/or money orders, drafts or travelers checks, and/or other documents or forms, and for no other purpose for the Line.

2. Definition of Line

The term "the Line," wherever mentioned in these Rules, means the particular Steamship Company, member of the Trans-Atlantic Passenger Conference, represented by the agent under a prescribed written form of authorization to act as such agent for said Steamship Company.

3. Responsibility of Agent

The agent is responsible to the Line for all business transacted in its behalf whether conducted by him or by any other person in his name.

4. Agency Address

The agent must transact the business of the agency only at the address and in the office at which it has been duly authorized. The agent must not offer or place or allow others to offer or place the Line's passage tickets and orders, railroad tickets and orders, money orders, drafts, travelers checks, or other documents or forms so held in trust, for sale at any address outside of his own authorized office; nor shall he sell such tickets, orders or other documents to, or offer to sell through or have any business dealings with, disqualified agents, peddlers, porters, runners or other unauthorized persons endeavoring to engage in or become associated with the steamship ticket business. The agent must not employ for the sale of such tickets, orders, or other documents or forms, or for the solicitation of the Line's business, in any particular, any person not regularly employed on his staff.

The agent must not employ a disqualified agent who has at any time been in default to any of the member Lines, or any person previously connected with such a disqualified agent until and unless authority for such employment has been secured from the Line.

5. Lines Represented

The agent is prohibited from booking passengers for any steamer not connected with the fleets of any of the member Lines which is operated in a trans-Atlantic service competitive with such Lines, or from representing in any capacity any steamship company operating a steamer in such a competitive service, unless written permission to do so is first obtained from such Lines through the Secretary of the Trans-Atlantic Passenger Conference. He is also prohibited from selling passage tickets, orders or similar documents so held in trust, under false representations as to the Line, vessel, or route by which a passenger is to be transported.

The agent is prohibited from acting or advertising himself as agent for, or as entitled to do business for any of the member Lines he does not represent by direct appointment; nor may he sell to another agent for any of the member Lines tickets, orders or similar documents, held in trust by him, of a Line which such other agent does not represent.

6. Tickets, Proceeds, etc., Held in Trust

The agent must hold in trust for the Line all tickets, orders, deposit receipts, money orders, drafts, travelers checks, and other documents or forms delivered to him by such Line, together with the proceeds of sale thereof, deposits, and any other funds received or collected for the account of said Line, and such proceeds, deposits and funds shall be kept separate and apart from all other funds and moneys in his hands.

7. Issue of the Line's Tickets, etc., Only

A ticket-holding agent must not hold nor accept for sale any ticket, deposit receipt, order or other documents or forms not supplied to him by the Line. He shall not issue orders, passage contracts or tickets of his own or those of any other individual, firm or corporation, other than the Line, nor shall he issue orders, passage contracts or tickets on private correspondence, firms or corporations, wherever located, for outward, round-trip or prepaid ocean transportation.

A ticket-holding agent not supplied by the Line with its deposit receipts may use his own form of deposit receipt and a non-ticket-holding agent may also use his own form of deposit receipt; in both instances, such deposit receipts must be consecutively numbered and must show the name of the Line, steamer and date of sailing for which issued and must be written in triplicate, one copy of which must be sent to the Line with the remittance.

8. Adherence to Authorized Rates

The agent must sell tickets, orders, money orders, drafts, travelers checks, documents or forms so held in trust only at the authorized rates then obtaining, in accordance with circular announcements issued from time to time by the Line, and must not at any time quote any rates not so authorized.

9. Securing of Accommodation

A passage ticket, order or similar document so held in trust must not be issued for specific accommodations, without first securing the reservation thereof from the Line.

10. Passage Money, etc., to be Shown on Tickets, etc.

The amount received for passage money, the date of issuance, the place of sale, and the correct and full name and address of the agency, must always be noted on the passage ticket, order or similar document.

11. Remittances

Advices of all sales of any of the Line's documents or forms so held in trust and/or of all reservations of accommodations, accompanied by remittances of the proceeds of sale, or deposits or part payments collected on reservations for Eastbound and/or Westbound passages, regardless of date of sailing, and so held in trust, must be forwarded on the day of sale (deposits on the day of receipt) to the office of the Line to which reports and remittances are required to be sent. For the purpose of verifying adherence to this requirement, the books, records and other documents of the agent will be subject to examination periodically by an auditor nominated by the Line or by the Trans-Atlantic Passenger Conference.

Any violation of this requirement with respect to any one of the member Lines will result in the cancellation of the agency by all of such Lines which it represents.

12. Booking Points

The agent must sell passage tickets, orders, or similar documents so held in trust only to or from such booking points as are designated in the published tariff of the Line, at the quoted rates, but not between any other points. Third class prepaid passengers must be booked through to final destination only on such forms as may be authorized by the Line.

13. Payment of Commission

The basis of commission is in accordance with circular announcements issued from time to time by the Line. Only an individual, firm or corporation employed by the Line as its agent, and so duly authorized by it in writing, is entitled to the authorized commission.

Commission is paid only upon the actual issuance of the ticket, order or similar document so held in trust and the direct receipt by the agent of the full proceeds of sale thereof. Commission is not paid on letters or cards of introduction.

(NOTE: Commission may be paid to an agent who has collected the initial payment (deposit) for a passage ticket although the ticket is subsequently issued at the Line's office.

Commission may not be deducted from a deposit (initial payment) but is paid to the agent upon completion of the sale whether the balance of the passage money is collected by the agent or by the Line's office and the passage ticket issued there.

Commission is not payable to an agent if a Line has collected the initial payment (deposit) for passage and the ticket is subsequently issued by the agent and the balance of the passage money paid to him.)

14. Commissions Not to be Divided

The agent alone is entitled to the full amount of commission allowed by the Line upon each sale. He must not promise or hold out any improper inducements, expressed or implied, of paying any portion of the commission allowed to purchasers or prospective purchasers of tickets, orders or similar documents, or to passengers or to any other persons, by letter, circular, newspaper advertisement or otherwise.

All rebates, drawbacks, discounts, credits, commissions, presents, prizes, or allowances of any description whatsoever made or offered to be made to a purchaser, prospective purchaser, passenger, or to any other person, with a view to influencing the sale of a ticket, order or similar document are strictly prohibited.

15. Telegraph or Telephone Charges

The agent must prepay all telegraph or telephone charges when communicating with the Line and the Line will prepay the reply.

16. Agent in Default

The agent who is at any time in default to any of the member Lines will be immediately disqualified and his agency will be promptly cancelled by all of the member Lines. When a firm is disqualified, each member thereof, and when a corporation is disqualified, each officer thereof, is also so disqualified.

The agent, immediately upon disqualification, is prohibited from selling tickets, orders or other documents or forms, or from transacting any other business of the agency, at his office or residence or at any other place or address, and must surrender immediately all tickets, orders and other documents or forms held in trust by him.

When the agent is disqualified, the sale of passage tickets, orders or other documents or forms of or for any of the member Lines is thereby prohibited.

17. Advertising

(a) Announcements

The term "advertising" means announcements, etc., by posters, booklets, circulars, printed matter, hand-bills, newspaper, magazine or periodical advertising, paid reading notices, radio, etc., or other paid public form of announcement in regard to the steamship business.

(b) Unfavorable Comparisons

No statements shall be made which reflect upon or institute unfavorable comparisons as between any of the member Lines or their steamers.

(c) Statements of Fact

Advertising expressions shall be limited to statements of fact, and must avoid any appearance of being misleading.

(d) Use of Superlatives, etc.

All advertisements shall conform to truth and good taste, and superlatives that are debatable must not be used in advertising matter.

(e) Steamer Blocks and Cuts

No steamer blocks or cuts may be utilized unless the steamer depicted is employed or to be employed in an advertised service of the Line. For general advertisements, circulars, pamphlets, etc., advertising the fleet or services generally of the Line, the steamer block or cut of any vessel employed or to be employed by the Line may be utilized, but for special announcements or advertisements for a particular steamer or voyage, no steamer block or cut may be utilized, except that depicting the vessel or vessels advertised.

The agent is not permitted to use the steamer block or cut of a vessel of any Line which he does not represent.

(f) Tonnage

All references to tonnage must refer to "gross registered tonnage." It is not permissible to advertise displacement tonnage unless the gross registered tonnage is simultaneously shown in the same characters. In newspaper advertisements, the agent must confine references to tonnage to the gross registered tonnage, and no particulars will be included in such advertisements of the steamers' displacement tonnages.

(g) Class of Accommodation

The several classes of passenger accommodation shall be designated by the following expressions only:

First Class
One Class
Cabin
Tourist

Equivalent expressions in the different languages may be utilized.

(h) Rates

All advertised or otherwise offered rates of trans-Atlantic traffic shall:

- (1) Include the name of the Line.
- (2) State the destination, if other than a port, and
- (3) Indicate the class of ocean accommodation.

(i) Revision of Rates

A revision of rates must not be advertised or be given publicity unless on written authority of the Line.

(k) Printed Matter

All printed matter pertaining to sailings and rates shall show the date and place of issue.

(m) Bill-boards and Signs

Bill posting, painted, electric and other signs must be restricted at all places to the immediate premises of the agent.

(n) Designation of Agency

The agent may represent himself only as an "Agent" or "Sub-Agent," but not as a "General Agent," "General Passenger Agent," "General Steamship Agent," "Special Agent," or similar designation, on letter-heads, office signs or otherwise.

(o) Agent's Responsibility

Any agent publishing an advertisement which is in violation of these Rules will be held liable therefor by the Line.

18. Erroneous or Misleading Statements

The agent is prohibited from issuing any erroneous or misleading statement to the effect that any of the member Lines or any of their agents is following practices that are contrary to these Rules or has offered to enter into such practices with said agent or otherwise.

19. Books Open for Inspection

The agent must keep appropriate accounts of all transactions relating to the agency, currently to date. His office premises may be visited at any time and all the books, records and documents in relation to the agency representation shall be open to inspection by the Line or by a duly authorized representative of the Trans-Atlantic Passenger Conference.

20. Adequate Amount of Business to be Transacted

The agent must endeavor to create and stimulate the sale of passenger transportation and must transact a sufficient amount of business to justify the costs and responsibilities incurred by the Line and by such other of the member Lines he represents in retaining the agency; the failure or inability to produce an amount of business sufficient, in the opinion of such Lines, to justify the continuance of the agency may result in its termination by all of such Lines.

21. Maintenance of Ethical Business Standards

The agent must at all times maintain ethical standards of business in the conduct of his agency and in his dealings with passengers, purchasers of tickets, orders or other documents or forms so held in trust and with each of the member Lines he represents.

22. Report of Violation of Rules

The agent is not justified in violating any of these Rules on the ground that some other agent is, or may be, doing so. It is the duty of the agent to report to any of the member Lines he represents or to the Trans-Atlantic Passenger Conference any violations thereof that may come to his knowledge, together with all facts and substantiating evidence.

23. Violation of Rules

When in the judgment of the member Lines, the agent has violated or has failed to comply with or adhere to any of these Rules or any additional or supplemental Rules, with respect to any of such Lines, the agency may be withdrawn and cancelled by all such Lines or damages may be imposed against such agency. The amount imposed, in the form of liquidated damages, shall not be more than \$1,000, for each infringement; if the agent fails to pay the amount of such damages within the time specified in a written notice mailed to him by the Secretary of the Trans-Atlantic Passenger Conference, he shall be immediately disqualified from acting in any capacity for any of the member Lines.

24. Termination of Agency

Either the Line or the agent may terminate the agency at any time.

25. Adherence to Rules

The agent agrees to adhere to and comply with these and such additional and/or supplemental Rules as may be announced from time to time by the Line, which in any way relate to or govern the activities or the business of the agency.

Issue of March 14, 1950.

Mr. QUINN. In answer to your first statement, we were invited to participate without a great deal of advance notice and we would be happy to answer any questions that you might have subsequent to the hearings if you wanted to communicate with us.

Mr. TALCOTT. I would like to have that privilege, if I may.

Mr. MULTER. Every member has that privilege.

Mr. TALCOTT. To what extent do the travel agents, within the definition of their business described in this agreement that you are presenting, engage in making personal loans to clients?

Mr. QUINN. The business of selling travel on credit is rapidly increasing, and that is one of the considerations with respect to the banks being in the travel business. It is not one which concerns us due to the obvious advantage banks have in this respect.

The prime concern that we have, is that before a travel agent can be approved he has to meet certain experience criteria and other objective requirements and he is compelled to proffer and advertise and promote the services of the airlines and the steamship companies. This, as we see it is inconsistent with the banks' obligations to its depositors and its stockholders.

I believe again, this would be answered in some of the material we make available to you.

Mr. TALCOTT. If we wrote into Federal law some prohibitions against banks conducting travel agency business, could we also exclude travel agents from making personal loans?

Mr. QUINN. If travel agents met the definition of a "bank," I believe you could. I certainly think it would be excessive imposition on the part of Congress to prohibit or limit personal loans between the businessman and his client for the purposes of travel or other purposes.

Mr. TALCOTT. Could we prohibit travel agents from the issuance of traveler's checks?

Mr. QUINN. They are regulated quite closely by the States.

Mr. TALCOTT. The travel agency is regulated by States, now, is it not?

Mr. QUINN. Not extensively, but it is rapidly becoming so.

In answer to your question, it is proper for the Congress to concern itself with travel agencies selling travelers checks and other matters related to banking.

Mr. TALCOTT. Does your organization have any objection to prohibiting the travel agencies from issuing travelers checks?

Mr. QUINN. Being an agent for source of issuance? I think we would.

Mr. MULTER. Let us clarify that. Do any travel agents today sell their own checks?

Mr. QUINN. American Express and Thos. Cook & Son.

Mr. MULTER. Other than Cook's and American Express, do any other travel agencies sell their own checks?

Mr. QUINN. No, sir.

Mr. MULTER. What they do is get agencies from banks and American Express or Cook's to sell their checks?

Mr. QUINN. That is correct, yes.

Mr. TALCOTT. American Express Co.—when you get American Express Co. travelers checks it is their check?

Mr. MULTER. That is right.

Mr. QUINN. They are the two exceptions.

Mr. TALCOTT. But you would be willing to prohibit them from issuing their own travelers checks?

Mr. QUINN. No. I think we would be willing to admit there should be regulation or control over this activity, as there is but I do not feel it is in the interests of banks or travel agents to eliminate them as a source of servicing the public.

Mr. TALCOTT. One of the reasons that the banks in my area got into the travel agency business, and they are only in it in a very small way, as there is today, because in the small towns there was not a travel agency available. Would you be willing to have any Federal regulation limited to towns of over say 5,000 people?

Mr. QUINN. Well, I will preface my answer. There are at the present time agencies in almost 1,800 communities and it is our understanding that there is no lack of adequate service by travel agents. I do not think there would be a problem created by prohibiting banks from engaging in that activity in certain communities.

Mr. TALCOTT. I am surprised by your answer. I wonder if it would be possible for you to provide us with a roster of all the travel agents, somewhat comparable to this with their names and addresses and cities.

Mr. MULTER. I think, Mr. Talcott, it must be perfectly obvious that all the communities, particularly the smaller communities, are not being serviced at the present time if you only have 1,800 communities that are being serviced. I have no objections to their supplying you with the individual. There can be no doubt that there are small communities, such as those towns or villages of 1,000 or 2,000 where I am sure you have no travel agents.

Mr. QUINN. The answer to that is, if it is infeasible for a travel agent, two- or three-man shop to initiate activities in a community, it would appear even more infeasible for a bank to get in that business in that community.

Mr. TALCOTT. But that was not true because that is one reason the banks were in it, because they were not being supplied adequately by travel agents. So for some reason or other, to serve the public and to help the public they did perform some travel agency services in small towns.

Mr. MULTER. You might try to determine for us whether or not there are any small towns where the banks are supplying the service because there is no one else supplying the service.

Mr. QUINN. We would be happy to check that for you.

Mr. TALCOTT. At this time you would not want to tell me that we should make the prohibition against banks being a travel agency in towns above say, 5,000 only?

Mr. QUINN. We would certainly give consideration to that suggestion, if in fact it is determined that there are communities that would otherwise be deprived of travel agency service. I personally was not aware that this is the case. That is worthy of consideration.

Mr. TALCOTT. I for one, Mr. Chairman, think that travel agency business is a good deal like restaurant services and I would be glad to include the travel agency business along with restaurants and cafeterias and automobile greasing. But I would like to have some definition of the travel agency business.

Mr. MULTER. I hope these gentlemen will supply it to us in addition to the documents they are supplying. They may give us the answer. Also, give it to us separately if you will, as to what you think would be a good definition to write into the law of the travel agency business. (The information referred to follows:)

A generally accepted definition of a travel agent is—"To engage in the business of conducting a travel agency" means and refers to holding out to any person directly or indirectly, as being able, or offering or undertaking by any means or method and whether acting as principal, agent or otherwise, to acquire for a fee, commission, or other valuable consideration from any source, travel reservations or accommodations; tickets for travel by air, rail, ship, bus, or other medium of transportation; hotel or other lodging reservations or accommodations; airplane reservations or accommodations and any other type of reservations or accommodations for lodging or transportation.

Mr. GRABOWSKI. What percentage of the travel business is done by a bank?

Mr. QUINN. There are an estimated 50 national banks in the business at the present time, which is a deceptively small number. It is usually the large and prominent banks in certain areas. First National City Bank is in the business rather extensively and they have indicated recently an intention to establish 100 branch offices in New York City alone. There are certain areas in the Midwest, in Ohio, and down through Kentucky, as I understand it where the banks are much more active.

Mr. GRABOWSKI. I agree with you, I do not think they should be in it. But I was trying to figure out how big it is. Would it be 10 percent, 5 percent, 2 percent?

Mr. QUINN. We do not know, but if we are able to compile this information we will make it available.

Mr. GRABOWSKI. If you have a list of Connecticut banks that are doing it, will you put it into the record?

Mr. QUINN. Yes.

(The information referred to follows:)

NUMBER OF BANKS ON THE APPROVED AGENCY LIST OF THE AIR TRAFFIC CONFERENCE
AS OF APRIL 7, 1966

The Air Transport Association of America supplied the subcommittee with names and addresses of 95 banks on the approved agency list of the Air Traffic Conference as of April 7, 1966. The Air Transport Association requested the subcommittee not to make the list public. The following is a compilation of the number of banks on the list in each State:

State	Number of banks	State	Number of banks
Alabama	3	Minnesota	1
Arizona	1	Mississippi	1
California	2	Missouri	2
Colorado	2	North Carolina	1
Connecticut	1	New Hampshire	1
Delaware	4	New Jersey	2
District of Columbia	2	New York	4
Florida	2	Ohio	18
Georgia	1	Pennsylvania	12
Illinois	9	South Carolina	1
Indiana	13	Tennessee	1
Kansas	1	Texas	1
Kentucky	1	West Virginia	2
Louisiana	2	Wisconsin	3
Maryland	1		

Mr. MULTER. Here, too, we find that the problem as presented to us, primarily comes out of the large communities. At the same time we want to be sure that the small communities are not deprived of any necessary service.

Mr. McGrath?

Mr. McGRATH. Thank you. I would be interested in knowing of the banks that are now engaging in the travel agency business; how many got into the business by buying out or absorbing existing travel agencies and how many started their own businesses from scratch, if you can get that information.

Mr. QUINN. We do not have that information at this time, but we will make an effort to obtain it for the committee.

Mr. QUINN. In several instances banks have acquired existing agencies. We have been informed within the last several months of this happening, perhaps on a more frequent basis.

Mr. HERING. It just happened in Buffalo that a bank bought out a private travel agency.

Mr. McGRATH. That would be helpful to me.

Mr. MULTER. Mr. Hansen?

Mr. HANSEN. I would like to ask a question regarding the presence of travel agency services in department stores. Has that come to be a relatively profuse situation or how does it stack up? Do they represent some travel agency or do they really have their own department?

Mr. HERING. In many cases you will find out that agencies such as "Ask Mr. Foster" Travel Service will have agencies within a department store where they actually lease the space and operate a travel agency from that area. This happens in many department stores. There are one or two department stores that have actually entered their own travel agency business. I think Alexander's in New York is one.

Mr. HANSEN. Let me ask this question and I go back to a comment that was made here earlier. Your testimony seemed to swing around the fact that you did not like the competition that the banks offered in this field. Is there any good reason or can you give us some good reason if it is in the public interest to deny the banks the right to indulge in services to the public in this fashion?

Mr. QUINN. If I might answer that, Mr. Hansen, on the competition question, we do not quarrel with the existence of healthy competition. Certainly, the travel agency industry is changing as rapidly as other industries. But we feel that the competitive distinction between a bank being in the travel business as opposed to just another travel agency is rather substantial.

For example, the relationship between a bank and its depositors is in the nature of a fiduciary relationship, and it places, we feel, an unfair competitive advantage in the hands of the bank.

There are other arguments which we feel can legitimately be made in the banks' own interest against this. For example, by virtue of the requirements incurred on behalf of the airlines and steamship conferences, they are imposing upon themselves obligations that are clearly unrelated to banking. The obligation to promote and do all that is possible to further air transportation as an example. We think

it is not consistent with the bank's ostensible objectivity with respect to industries. Theoretically, a bank could have as a creditor a steamship company. If it maintained a travel department it is required to do all it can to promote air transportation, this would at least be incipiently a conflict-of-interest arrangement as we see it.

There are, I think, degrees of participation by banks in this business that should be recognized. One is a bank providing travel agency facilities for itself and for its employees. This is expressly prohibited by an agreement of the Air Traffic Conference, approved by the Civil Aeronautics Board, since in theory it would be a rebate. It is a violation of the Federal Aviation Act.

A second step would be for the bank to provide services just to its customers, and some argument could be made in defense of that, the theory being there are some relationships between the banking services such as making loans and the needs of the customers. But now, the situation is going to the third stage where banks are being encouraged to get into the business of selling travel and other facilities on a commercial basis to the general public. Ostensibly it is an effort again to engage in an unrelated activity which is designed to strengthen the banking business but is not otherwise connected to it.

Mr. HANSEN. One other point. This was alluded to by Mr. Talcott, I believe. There are situations prevalent now of banks in small communities who are rendering this service. I remember way back in my youth the Hamburg-American Line had an agency at the local bank. This community had many German people in it and they all wanted to go back to the homeland now and then but they did not care to venture clear down to Omaha or Sioux City or Des Moines. This overawed them, the idea of going to some distant city to make their arrangements, so the local banker took care of it for them and I suspect that there is a little of that in these local agency arrangements now.

For example, I am thinking specifically of the First National Bank at Sioux Center, Iowa. This is a Holland community, and, believe it or not, there are still a lot of elderly people in that area that are quite provincial in their habits and they will go down to the local banker and make their arrangements to go back to Holland. But they would not get to Holland if they had to go to Sioux City for their travel arrangements. What is your answer to that situation?

Mr. QUINN. What you have just referred to did exist perhaps on a more prevalent basis several years ago and we acknowledge it still exists in some limited ways today. We think it is desirable that people be encouraged to travel though and to have confidence in travel agents. I think the sophistication of the travel agency business has grown just as the banking business has. But they have grown in opposite directions. It is much more difficult and demanding to be a travel agent than it was 25 or 30 years ago where the mere issuance of a steamship ticket was the total complexity of it. Now, it is much more demanding and complex and, as I pointed out in my statement, in order to become a travel agent, your employees have to have at least 2 years' experience with an airline or travel agency. You have to be located in a certain area and have certain facilities. All of this is inconsistent with the banking business. So, the degree of sophistica-

tion has broadened the breach between the travel agency business and the banking one and we do not feel that they are compatible at this point.

If I might add one other point, there is an additional good argument against banks remaining in the travel business. That is, with the States increasing their involvement in the regulation of travel agencies, particularly in New York, what we could find very soon is a licensing bill in effect which would impose State jurisdiction on national banks. Some of the requirements contained in some of the bills which we have seen are certainly inconsistent with the bank's interest. For example, there could be a requirement to divulge all the costs, all of the profits in connection with the sale of a tour. This is not, we feel, consistent with the banking interest, although it may make some sense from the point of view of the travel agents and right of the State to regulate that activity. It is not, we feel, in the interest of national banks to have the State poking around in their books because they also happen to be in the travel agency business.

Mr. HANSEN. It is your position that it would be inconsistent to write that law so that there would be a possibility of having travel agencies in banks of towns of, say, below a certain size? You think that this would be inconsistency and would not be workable in light of this State legislation that you are talking about?

Mr. QUINN. We agree in principle with what you are advocating. It is the same point that Mr. Talcott made. But it would be difficult to draft legislation which would make the prohibition contingent upon the size of the community or the lack of other services. Perhaps we could give that some thought.

Mr. HANSEN. Let me ask you another question in this same area. To what extent are existing travel agencies using facilities such as banks in communities such as I described a minute ago in a way similar to what is going on in some of the department stores in the larger cities?

Mr. QUINN. To my knowledge most of the banks that are in the travel agency business are in it on their own behalf, that is, the bank as an entity is the contracting party with the airlines and steamship companies. There are some instances in which a travel agent may be in a contractual arrangement with a bank and provide the services on behalf of the bank. But I do not think it is prevalent.

Mr. HERING. If it exists, it would be very minor.

Mr. HANSEN. There are not too many as far as department stores are concerned. The whole purpose of this department store counter arrangement is for the convenience of the people who are too timid to go into some walk-in door on another street that says travel agency on it. They know the people in the department store, they know their way around, they come into that place as a matter of habit and of course they do have the benefit of charge accounts at the department store on this service. The same situation exists with respect to these people in outlying communities who are in the habit of going to their bank to pay their taxes and make their deposits and do their other business. They just naturally gravitate to a center of that kind for travel service if it is available there.

Now, would you suggest, for example, that it would be feasible to write into this law an arrangement that would make it possible for a recognized licensed travel agency to use the bank as an agent?

Mr. QUINN. I think that would not be inconsistent with our position. There again we preserve the concept that it is not the bank that is operating as a travel agency, it is the travel agent as a legal entity who is assuming responsibilities of making the commitments necessary to perform on behalf of the public and the airlines. There is an essential distinction there and I think it would appear to be acceptable.

Mr. HERING. This is something, if I may add, this is something along the lines of what happened in New York some years ago. As a result of the attorney general's ruling, the State banks at that time got out of the travel agency business. I think they did make arrangements along the lines that you are talking about.

Mr. MULTER. In this proposed legislation in the States, is there a provision that these travel agencies be bonded?

Mr. QUINN. There is, Mr. Chairman. In the State of New York there is a provision which would require the acquisition of a bond by an agent.

Mr. MULTER. Is there any exception written into the bills so that banks would not have to be bonded?

Mr. QUINN. It applies to all agencies.

Mr. MULTER. Applies across the board?

Mr. QUINN. Yes.

Mr. MULTER. I remember years ago the steamship companies would give so-called exclusive agencies to certain travel agents, but then the travel agent, in turn, had to agree that he would not sell any tickets for any other steamship line. Does that still prevail?

Mr. QUINN. Unfortunately, it does. We are at the present time litigating in the U.S. court of appeals here in the District of Columbia the legality of that so-called tying rule. The Federal Maritime Commission agreed with ASTA that it was illegal and contrary to the Federal Shipping Act and the court of appeals currently has that under review, but it does exist.

Mr. HERING. It is being enforced.

Mr. MULTER. If a bank then makes that kind of an agreement with a steamship company, then its customer will be told, well, we have no ticket available on the United States Lines, you can only use the Hamburg Line. They would not say, we have no tickets available, but would pretend there was no space available on the other steamship line.

Mr. QUINN. That is a very real possibility.

Mr. MULTER. I know most of the travel agencies honor all the national credit cards. Do any of them extend their own credit to the customer who comes in and buys a ticket or a tour?

Mr. QUINN. It is our understanding that that situation does exist. The requirement very briefly is that a travel agent has to remit to the airlines 3 times a month all the money he collects for selling airplane tickets, and incidentally, that money goes to a bank, of which there are 10 in the country, and the bank in turn disburses the funds to the airlines. We are talking of over a billion dollars a year in cash

flow. It is quite often necessary when a person purchases a ticket on the 1st of the month for a trip on the 15th of the month that the agent has to put up his own money and remit to the bank on the 10th and subsequently bill the client. So in that sense he is extending credit for at least a short time.

Mr. MULTER. A man comes in and sets up his tour and orders his ticket in advance, but he actually does not pay the travel agent until he comes in to pick up the ticket. Once you issue the ticket you must, within a number of days remit to the company?

Mr. QUINN. Yes. If a bank can extend credit, which it could out of general funds, in an unlimited manner without concern for paying interest charges, certainly it puts the bank in a highly improved position with respect to the travel agent that has to use his own funds or perhaps borrow money to do the same thing.

Mr. MULTER. What the banks are doing, besides advertising—in addition to and apart from the advertising, they will actually sell the customer a tour. Let us assume the tour costs \$1,500. They will have him then sign a note for the \$1,500 and let him pay it out in installments. He may use the tour next week or next month and be paying for it over the next year. Do any of the travel agencies extend that kind of credit?

Mr. QUINN. To my knowledge that is not a prevalent practice. It may exist in some isolated instances. It just is not practical for a travel agent to do it. He only gets 5 percent on the sale of a domestic airline ticket. If he has to borrow at 6 percent he is losing money.

Mr. MULTER. Anything else, gentlemen?

Thank you very much. You have been very helpful and when you review your testimony you can supplement it by anything else that may be prompted by the questions that we have asked and also submit additional information that we have asked of you.

Mr. QUINN. We would be very happy to.

Mr. MULTER. The committee will stand in recess.

(Whereupon, at 12:20 p.m., the subcommittee adjourned to reconvene subject to the call of the Chair.)

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APPENDIX

(Following are excerpts from hearings on H.R. 9548 and H.R. 9822, "Legislation To Prohibit Banks From Performing Certain Nonbanking Services and From Engaging in the Business of Personal Property Leasing," Subcommittee on Bank Supervision and Insurance, Committee on Banking and Currency, 88th Cong., 2d sess.):

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
Washington, March 25, 1964.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance, Committee on Banking and Currency, House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in response to your request for a report from the Board of Governors on H.R. 9548, a bill to prohibit banks from performing certain nonbanking services, and for other purposes.

The bill would prohibit every national bank, State member bank, and other insured bank from performing "any clerical, administrative, bookkeeping, statistical, accounting, or other similar services for its depositors, borrowers, or other customers, except to the extent that such services are a necessary incident to the proper discharge of lawful functions of such banks as a depository, lender, trustee, or agent."

The Board would not favor enactment of H.R. 9548. The Board does, however, share the misgivings that have been expressed concerning the tendency of some banks with modern data processing and other automated equipment to use it for the performance of services essentially unrelated to banking.

The problem arises in large part from the relatively high cost of such equipment and its adaptability to the performance of a wide range of data processing and related services. In order to utilize its equipment economically, a bank should not be prohibited some latitude in selling computer services, time, and capacity in excess of its own needs. Occasions for this may arise especially at the outset of a bank's computer operation and before some of the banking functions susceptible thereto have been automated. At the same time, the Board believes that, as nearly as practicable, a bank's computer installation should be used principally for the performance of normal banking functions, either for itself or for other banks, and that the size or capacity of the installation should be limited accordingly. Normal banking services should be regarded as excluding services for nonbank customers unless there exists a specific tie-in between the particular service and a banking transaction for the customer involved.

Voluntary adherence to the principles outlined above would adequately keep banks in the banking business, and we believe your hearings will help in minimizing the problems that have arisen as banks seek to find their proper role in furnishing data processing services. As indicated previously, the Board does not think that the situation warrants so severe a step as the adoption of the prohibition in H.R. 9548.

Public Law 87-856, approved October 23, 1962, permits banks to pool their efforts by joining in the ownership of data processing organizations. Section 4 of that act forbids such a cooperative service corporation to "engage in any activity other than the performance of bank services for banks." If a single bank owning data processing equipment is permitted to use its excess capacity for other than its own needs, these cooperative service corporations should likewise be authorized to do so and hence section 4 should be repealed.

Sincerely yours,

WM. MCC. MARTIN, JR.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
Washington, March 26, 1964.

HON. ABRAHAM J. MULTER,
*Chairman, Subcommittee on Bank Supervision and Insurance, Committee on
Banking and Currency, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the Board's views on H.R. 9822, a bill to prohibit banks from engaging in the business of personal property leasing.

From your remarks on January 31, 1964, on the floor of the House, it appears that introduction of H.R. 9822 was prompted by the views set out in a letter of March 18, 1963, to the presidents of all national banks from the Comptroller of the Currency. As reprinted in this "Manual for National Banks," paragraph 3400, the Comptroller's position on this matter is as follows:

"A national bank may become the owner and lessor of personal property acquired upon the specific request of and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. These transactions do not result in obligations subject to the lending limits set forth in 12 U.S.C. 84."

In the opinion of the Board, "leasing" of personal property by banks divides, broadly speaking, into two quite different kinds of transactions. As explained hereinafter, one kind is unobjectionable, and in fact may be advantageous to the bank or its customers. The other type, in the Board's judgment, is not a suitable activity for banks and should be discouraged or prohibited. Accordingly, the practice of "leasing" by banks should not be either completely permitted or completely prohibited; the beneficial kind of lease arrangements should be permitted and the undesirable kind should be prevented.

As you know, banks frequently make loans on the security of personal property, the bank being protected either by a physical pledge of the property or by a security lien thereon, usually in the form of a recorded chattel mortgage. But in certain circumstances, it seems, banks have found that the protection afforded by a chattel mortgage may not be entirely effective in the event of the borrower's insolvency, for example. For this reason and perhaps to gain other benefits for the bank or its customers, banks have sometimes extended credit by purchasing personal property and "leasing" it to a customer for the full purchase price, instead of lending the customer the funds to purchase the property and then receiving a chattel mortgage thereon.

An illustration may clarify this procedure. A bank's customer wishes to acquire 10 trucks costing \$10,000 each. Ordinarily, the bank would lend the customer the needed \$100,000, and the customer would purchase the trucks and give the bank a chattel mortgage, to protect it in the event of the borrower's default. Occasionally, however, a bank may prefer to purchase the trucks and then to "lease" them to the customer, title being retained by the bank while the trucks are used by the customer. Under both arrangements, all other terms are substantially identical—for example, the customer might repay the bank \$25,000 semiannually, together with interest at 5 percent on the outstanding balance. In each case, at the end of 2 years the bank would have been repaid its \$100,000 advance with interest at the agreed rate, and the customer would then own the trucks free of any lien. In the case of the chattel mortgage, the lien of the mortgage would be released after full repayment; whereas in the case of the lease arrangement, the bank would transfer title to the customer in accordance with the lease/sale agreement.

In the opinion of the Board such uses of lease arrangements are unobjectionable. They may provide the bank with the strongest possible lien to protect its extension of credit or the borrower with a form of credit best suited to its needs. To prohibit banks from "leasing" property in this way would only deprive them of a useful security device.

The other kind of leasing, however, is quite different in purpose and effect and in its status with respect to sound banking principles. It may be best to illustrate this in a comparable situation.

In the case described above, the bank's customer might not wish to purchase the 10 trucks, but only to use them until the completion of a specific construction job, expected to take 6 months. In such a case, he might request the bank to purchase the trucks and to lease them to him for 6 months at a rental of \$40,000 for the 6-month period.

If a bank purchased and leased the trucks in these circumstances, the transaction would not be a secured extension of credit, as in the other case. The bank would not be advancing \$100,000 in reliance on the promise of its customer to reimburse that amount to the bank, with interest. Instead of a security title, as in the first case, the bank would acquire general ownership of the trucks, with all the opportunities for gain and risks of loss inherent in the ownership and leasing of property. After the first customer had used the trucks for 6 months and paid the bank \$40,000, as stipulated in the lease agreement, the bank would be the owner of 10 used trucks in which it still had an investment of \$60,000, and it would be compelled either to sell the trucks at the best available price or to seek to lease them to one of more successive lessees. Depending upon the bank's skill and enterprise, and economic conditions generally and in the secondhand truck field (or truck leasing business) specifically, the bank as an entrepreneur might emerge from the venture with a substantial loss or a substantial profit. In either event, however, the essence of the bank's operation would be the purchasing and leasing of equipment rather than the extension of secured credit, as in the case first described.

The ruling of the Comptroller of the Currency, set forth above, might be read as purporting to authorize national banks to engage in leasing of the second type. This interpretation of his ruling seems to be supported by the statement therein that the transactions referred to by the Comptroller are not subject to statutory lending limits, since true extensions of credit through the lease/sale mechanism, the Board presumes, would be subject to the same limitations as other loan transactions. (If the Comptroller should actually take the position that extensions of credit are exempt from statutory limits when handled through lease arrangements, the situation would call for legislative correction.)

The Board infers that H.R. 9822 was introduced with the purpose of preventing banks from engaging in leasing activities of the second type, as apparently approved by the Comptroller. The Board believes that such an objective would be sound. However, the provisions of the first section of the bill, read in connection with its title, might be construed as prohibiting not only the second type of transaction, but also the first, which the Board regards as an appropriate device for the extension of secured credit, as has been indicated.

The Board does not know how the Comptroller's ruling has been interpreted and applied by national banks or the extent to which national banks and State banks engage in purchasing and leasing equipment and other personal property in an unsafe and unsound manner. It is likely that few, if any, banks will engage in such activities, in which case prohibitive legislation would be unnecessary. If, however, Congress should decide that legislation along these lines is desirable in any event, the Board suggests that such legislation be so drafted as not to prevent banks from using lease arrangements as a form of security for legitimate extensions of credit.

Sincerely yours,

WM. MCC. MARTIN, Jr.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance, Committee on Banking and Currency, House of Representatives, Washington, D.C.

DEAR ABE: You have requested the views of this Corporation on H.R. 9548, a bill to prohibit banks from performing nonbanking services, and for other purposes. The bill places on the three Federal banking agencies the duty of regulating for banks under their individual jurisdiction what "clerical, administrative, bookkeeping, statistical, accounting, or other similar services" for bank depositors, borrowers, or other customers are "a necessary incident to the proper discharge of lawful functions of such bank as a depository, lender, trustee, or agent."

Bank services of course have varied through the years and have increased as the needs of the banking business and the needs of the banks' customers and communities have grown. They have become an essential part of the banks' business. Regulated as to maximum interest rates on deposits and loans, banks must compete for business with added services. Such services to customers are

generally in the area of the banks' own operation and supplement the banks' efficient use of their personnel and equipment.

Services have been rendered by banks for many years without question as to their legality or propriety, without hazard and with resulting benefit of efficient and reasonable services to the bank, its customers and the community. As we see it, this bill would only add to the costs of all concerned. If a bank can perform a service related to its business operation for anyone in its community at a lower cost than others and thereby operate more efficiently and economically, it should not, in our opinion, be barred from doing it.

When you introduced this bill you emphasized automatic data processing and other automated recordkeeping equipment and the need to prevent broadening of "service to bank customers during the course of their normal banking functions" to include "the taking over of bookkeeping and accounting functions for businessmen."

Presumably the purpose of this proposed legislation is to prevent banks from furnishing accounting and other data processing services to customers, unless these activities conform to the pattern that has always been characteristic of banking. Nevertheless, the language of the prohibitions is exceedingly broad in scope and it would seem to cloud the legality of many important banking services that banks have always performed for their customers.

These are changing times and banking cannot be insulated from the mainstream of technical progress. Hope is widespread that the application of electronic data-processing equipment to the clerical work inherent in banking may enable the industry to master its ever-spiraling workload. Without the introduction of entirely new methods that greatly increase the effectiveness of the limited amount of human effort available for clerical routines it would be impossible for banking to pace the growth of economy at a reasonable cost.

Automatic data processing equipment can be introduced in the industry only on a bank-by-bank basis. The methods are novel, the equipment entails heavy capital investment, and their applications require much experimentation. There is good reason to believe that automation of clerical work will result in cost savings, and certainly it is the only way to prevent paperwork expenses from growing out of hand in the long run. It is reasonable, meanwhile, to expect that installations in some banks will have capacity in excess of the immediate needs. To prohibit the employment of such excess capacity not only increases the cost of such equipment in nonbanking installations but it also increases bank costs by denying the employment of otherwise idle facilities. Thus, any legislative proscriptions that handicap the introduction of new data processing facilities in banking prevent or delay the adoption of cost-saving measures that will eventually mean economies to bank customers.

Viewed objectively, this legislation has as a necessary consequence a slowing down of the efforts now widespread to automate paper processing activities. If that is the real objective, then its scope should be extended throughout all industry and not confined to banking. To be sure, automation in the clerical field will pose serious problems to accountants and others who also must adapt to new facilities. It is not in the public interest to preserve well-established patterns of economic activity when new and more efficient methods are available. Accountants will still be able to perform their professional duties for their customers and both would be assisted by more economical mechanical bank services. In fact, the full use of data-processing equipment should enable accountants to more effectively serve the requirements of their bank clients.

Whether the management of a bank is devoting too much of its energy and funds to the performance of clerical services for customers who can use multi-purpose automated equipment is a question of fact to be answered in each case and can be controlled by bank supervision. The broad prohibition on service activities, contemplated by this legislation as a method to regulate data processing in banks, will be harmful to banking specifically and the business community generally.

For these reasons we do not recommend the enactment of H.R. 9548.

In 1962 Public Law 87-856 authorized banks to invest in corporations whose purpose is to provide bank services. Section 4 of this act provides that no bank service corporation may engage in any activity other than the performance of bank services for banks. The legislative proposal, enacted as Public Law 87-856, was originally intended to enable small banks to participate with other banks and business to avail themselves of efficient services at reasonable

costs from bank service corporations. If these small banks can acquire these services on a more economical and efficient basis at lower costs to themselves and to others through the participation by other businesses in the services rendered by such a bank service corporation they should, in our opinion, be permitted to do so. We believe that the efficiency of the service corporations and the resulting benefits, through lower costs, to investing banks would be increased if the service corporations were not limited to serving banks exclusively. For these reasons, we believe section 4 of Public Law 87-856 imposes an unreasonable and costly burden on bank service corporations and should be removed by Congress. Accordingly, the Corporation recommends the repeal of section 4 of Public Law 87-856.

We have been advised by the Bureau of the Budget that it has no objection from the standpoint of the administration's program to the submission of this letter.

Sincerely yours,

JOSEPH W. BARR, *Chairman.*

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, April 10, 1964.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance, Committee on Banking and Currency, House of Representatives, Washington, D.C.

DEAR ABE: You have requested the views of this Corporation on H.R. 9822, a bill to prohibit banks from engaging in the business of personal property leasing.

Because of the few insured banks engaged in the practice of personal property leasing and the absence of any known bank supervision problems in this area, I might say that in the narrow sense the Corporation would have little interest in the proposed legislation. However, in the broader concern of the Corporation for all banks in the Federal Deposit Insurance System, I would like to express the Corporation's views on H.R. 9822.

This legislation is designed to prevent banks from engaging in the business of leasing equipment such as motor vehicles—passenger cars and trucks—to a series of users most of whose needs do not encompass the entire life of the machine. Typically, the pieces of equipment are rather costly. They are useful for a number of years and the users comprise a rather broad and diversified market. The need for the equipment is intermittent, often related to a specific job with relatively short duration. Finally, a lease arrangement is used to protect the capital investment.

Specialized equipment leasing companies are intermediaries who render essentially a financing service. With a minimum amount of ownership equity, these enterprises in turn are heavy borrowers from the banks to finance the acquisition of equipment. Only to very limited extent do firms engaged in the rental of equipment customarily engage in property management activities.

The use of a lease on equipment to facilitate the employment of bank funds is far from new. For many decades the railroads have financed rolling stock by this arrangement. The user of equipment, the railroad company, is the lessee and repays the investment in equipment as it wears out in the technical form of rentals. Large sums of money are involved in this type of financing and many banks as well as other investors participate by the acquisition of investments known as equipment trust certificates. Such securities are issued by a trustee who holds legal title to the rolling stock.

To be sure, equipment trust financing in the railroad industry usually contemplated one rather than a series of lessees, but on occasion when the original lessee defaulted equipment was leased to other users. Furthermore, this form of financing has been applied to other types of equipment such as airplanes and heavy machinery. The performance of the lease arrangement in railroad financing has been good. Nevertheless, the legislation as proposed would surely becloud, if it does not actually prohibit, a form of bank investments that historically has financed successfully and at low cost a very large portion of all railroad equipment.

Admittedly, bank financing of equipment by a lease arrangement—irrespective of whether it covers railroad rolling stock, motor vehicles, or other heavy machinery—differs from a bank's loan and discount operations. But this in

itself does not taint lease financing. Looking to the substance of the transaction, in any event it is obvious that bank funds would be used to finance the equipment. With respect to equipment financing the difference between the lease arrangement and a bank loan to an equipment leasing company is largely the extent of management needed to service the transaction. Control over the property by the bank in a leasing arrangement would seem to afford better protection for the bank.

Where equipment leasing is lawful for a bank, the practice cannot be condemned out of hand merely because there are nonbanking firms engaged in this business. If a bank has a staff with sufficient managerial skill to engage in equipment financing by means of lease arrangements then this type of business is not objectionable. The same can be said, of course, for many other specialized types of banking that have developed in recent years—for example, consumer financing or the financing of automobile dealers.

In net effect the prohibition of equipment lease financing by banks would increase costs to equipment users. Insofar as the prohibition made it impossible for efficient banks to perform this type of financing, it would support inefficient and high-cost operators to the detriment of the public.

Bank supervision in the course of periodic examinations, among other things, reviews the quality of management in each individual bank. Certainly the review that appraises managerial skills would detect those banks that could not properly engage in equipment lease financing and these could be discouraged from engaging in this type of business.

For the reasons set forth herein, this Corporation would not favor the enactment of H.R. 9822 by the Congress. Instead, we would recommend that any question of the authority of national banks to engage in direct leasing be removed by express authorization with the bank's legal limit to any single borrower made applicable to the aggregate of borrowings and leasing by any person. To our knowledge, few banks are now engaging in direct leasing of personal property. If future experience should disclose unsafe or unsound aspects of personal property leasing by banks, this Corporation would support corrective legislation.

We have been advised by the Bureau of the Budget that it has no objection from the standpoint of the administration's program to the submission of this letter.

JOSEPH W. BARR, *Chairman.*

STATEMENT OF FRANK M. BROWNING, CHAIRMAN OF THE BOARD, BANK OF UTAH
AND BANK OF BEN LOMOND, OGDEN, UTAH

Mr. BROWNING. My name is Frank M. Browning. I am organizer and chairman of the board of the Bank of Utah and the Bank of Ben Lomond, both in the Weber County area in the northern part of the State of Utah. These two institutions would be classified as independent banks.

My background, other than banking, includes being presently a Utah State Senator, having served approximately 12 years; and former director of the Federal Reserve Bank of San Francisco, Salt Lake City Branch. These activities, along with oversea service in two World Wars and at present on retired Army status; and as organizer of various corporate activities in the development of our area, cover my background.

I appreciate the opportunity of appearing before your honorable committee to express my views as to the need for legislation to control unwarranted activities that we, as independent banks, have had to face since the introduction of automation.

I would want to clarify first, that neither I nor my associates are fighting the trend of expediting bank accounting processes. Our own institutions have laid groundwork to the approach for complete automation and our final installation of computers will be made this summer. We hope to confine its use to banking.

We are deeply concerned about the abuses which have entered into the use of this revolutionary change, which I shall attempt to cite clearly.

Many larger banks rushed into the installation of these high-priced units and in some cases have reached far beyond ethical practices in obtaining nonbank business either to cover the cost of excessively large computers or to compete unfairly with smaller banks. An example of such practice is that certain banks have taken over the payroll functions of large school districts.

I want to clarify what I consider are ethical approaches to bank participation in payroll account processing and what I consider to be an unethical approach.

I would hasten to make clear that not all banks have unethically abused this practice. I am citing our experiences as an indication wherein banks and bank control regulatory agencies are headed for trouble and unlimited calls for more and more laws pyramiding onto the present legal crazy quilt pattern.

In the case of our institution, we have been successful through supporting progressive education in maintaining friendly customers relationship and were favored with our share of teachers' depository checking accounts. My own record in the State senate, where I have successfully spearheaded educational legislation, has placed us close to our teachers' groups.

Our larger competitive banks, in order to spread the cost of computers into other areas (I think that is putting it nicely) have padlocked all school board payroll accounting by creating a captive account in the name of each individual employee and then crediting this account with the employee's monthly earnings. This is a joint arrangement between the banks and the allied school boards. This is where the great danger comes in, the allied school boards. The penalty to the taxpayer is that these banks demand the public institution maintain a large frozen bank account to compensate for their cost. The tax burdened citizen should be aware of his hidden frozen tax dollar.

If this had been handled as the Federal Government handles its employees, wherein the Government agency asks the individual where his check is to go, other banks could not have been hurt—even though we question the propriety of this revolutionary activity on the part of privately owned financial institutions.

In the cases that I have cited, our school boards and the banks capture the teachers' salaries by a very sinister approach. They state to the schoolteacher that his earnings have been credited to an account at their bank and in all fairness, they will allow the recipient to transfer it to the bank of his choice by making out another check. There is at least a 3-day delay before the wage earner actually knows how much has been credited to his account because of miscellaneous deductions. This confusion, along with having to transfer his funds each month makes personal accounting more complicated than ever, and gradually we have found that in spite of all our efforts to convince the teachers that they should follow this extra procedure, in the end we have lost the accounts except in cases of a few dedicated individuals who appreciate what we have done for their cause. That is what they commonly describe as captive accounts.

I presented our case against this unethical procedure to the Federal Reserve authorities in San Francisco and all they would offer was the thought that the staff offered their sympathy, but the procedures did not violate any existing law. We understand now that it does violate a Federal antitrust and restraint of trade law. They offered no help at all to bring it up to the Board of Governors to see if there could not be some law set up to protect the little bank in that respect.

I am positive to this date that no one on the Federal Reserve staff attempted to differentiate (here is the important point) between allowing the employee freedom of choice as to his bank, as the Federal agencies do in their payroll procedure, or being regimented in a captive group.

Other banks, with a more ethical approach, have also reached into payroll activity, but they have followed the ethical and dignified procedure established by the Federal Government in allowing the employee to select his own bank. In other words, the paying bank would credit so many accounts over in John Doe's bank, and that would take care of that group, and that is all there is to it. Conforming to the more ethical approach, the aspiring bookkeeping bank would still carry a monopolistic advantage in having first chance to tie up all payroll personnel. In other words, the recipient, the janitor, the teacher, has got to go there to initiate his banking. And they have great leverage in a lot of cases, because a youngster, for example, is just growing up and starting his first account. There is a terrific advantage to the paying bank.

To sum up all of this to your honorable committee, I am sure that what I have offered will indicate the terrific responsibility that our controlling agencies will have to assume to keep ambitious banks from injuring smaller banks and professional people in carrying out their responsibilities.

I might add, Mr. Chairman, not only does it involve the bank's capital and much risk in case of errors, and the loan officers and loan committees could be put under pressure by the favored bank to authorize substandard risk loans.

The historic function of a bank is to properly and ethically handle depositors' funds. Assuming accounting responsibilities, direct and contingent, that do not properly belong to a bank, subjects a bank to great and unreasonable risks. Even the best national accounting firms are now frightened to directly verify their reports as a result of recent scandals; namely, the vegetable oil exposure. They can put all of the computers to work in the world, but in the final outcome you will find a decision has to be made by the members of the loan committee, the directors, in the bank—the final factor there is the integrity of the man on top of the tank who was supposed to let the weight go down to the bottom of the tank. I mention that, because you cannot shake off that responsibility. Can the terrific burden of responsibility on banks justify this certain peril?

I foresee that bankers could be subjected to severe pressure in granting questionable loans. This threat could occur by officers of corporations, whose accounting work is done by the bank and as a result of this, the bank obtains several hundred employee accounts. The threat of transferring these captive employee accounts to a competitive bank may result in heavy pressure on bank loan officers to compromise their credit judgment in making unwise loans.

This is merely one segment of terrific problems which will arise if this process is not harnessed right from the start.

I call your attention, Mr. Chairman, to the great complexity of the banking laws that now exist that are set up to protect mostly the things in the background, the shadow of the contingency. And if we go off in this unexplored sea with all of its shoals you can imagine the time that will be spent in studying legislation to control it. This is unlimited in its scope. And there are other risks that will develop faster than laws can be made.

The complicated, highly competitive financial world today, as exemplified in banking, can ill afford to be neglecting their terrific responsibility in guarding the widows funds by reaching into the activities and assuming risks that properly belong to other businesses and professions.

From the sublime to the ridiculous, I love to use the expression, "We should kick the bookkeeper's stool from under the banker and put him back in monetary responsibility. Therein lies an unlimited field, deep with many problems."

Thank you.

STATEMENT OF J. SINCLAIR ARMSTRONG, EXECUTIVE VICE PRESIDENT, U.S. TRUST CO. OF NEW YORK

My name is J. Sinclair Armstrong, my home is at 211 East 18th Street, New York City, and I am executive vice president of the U.S. Trust Co., of New York, 45 Wall Street, New York City.

My colleagues at the trust company and I very much appreciate the opportunity afforded me to express our views on H.R. 9822, entitled "A bill to prohibit banks from engaging in the business of personal property leasing," and H.R. 9584, entitled "A bill to prohibit banks from performing certain nonbanking services." As one who has in earlier official capacity frequently testified before other committees of the House of Representatives, it gives me great pleasure to appear before the Subcommittee on Bank Supervision and Insurance of the Committee on Banking and Currency.

The U.S. Trust Co. of New York, a banking institution chartered by the New York Legislature in 1853, has specialized for 111 years in trusts and investment management for individuals, members of families, and religious, educational, and charitable institutions of all kinds, and for pension, and retirement funds of corporations, employee associations and labor unions, and a number of public authorities, including the State of New York. The trust company is a member of the Federal Reserve System and the Federal Deposit Insurance Corporation, and is under the regulatory jurisdiction, as well, of the superintendent of banks of the State of New York.

Gentlemen, I speak on behalf of the trust company in opposition to these bills.

The first, H.R. 9822, would prohibit a bank from leasing any personal property under any circumstances or by any means as a result of which it performs or is compensated for any services other than the lending of money or advancement of credit with respect to such property, or acquires any interest in such property other than as security for the repayment of money or credit advanced together with interest and other charges for exclusively financial

services, or may realize from such property in the event of default more than such repayment and charges.

The second, H.R. 9548, would prohibit a bank from performing any clerical, administrative, bookkeeping, statistical, accounting, or other similar services for its depositors, borrowers, or other customers, except to the extent that such services are a necessary incident to the proper discharge of lawful functions of such bank as a depository, lender, trustee, or agent.

Your committee's release of February 12, 1964, adds: "The subcommittee will also consider the advisability of enlarging these bills to exclude the performance of all nonbanking services by banks for depositors and others with or without compensation."

The interest of the U.S. Trust Co. of New York in presenting these comments, which will be brief to conserve the committee's valuable time, comes from our wish to be helpful and constructive. We make these comments from the point of view of the national public interest.

This committee will want to base any legislative action on a clear record of need for legislation in the public interest. The banking industry provides one of the most vital elements in our Nation's economic well-being and growth. It is one of the most tightly restricted, highly regulated, and competitive industries in our Nation. This committee, which has as its concern the proper functioning of our banking system, will not wish to impose unnecessary shackles on it in the absence of a convincing showing of abuse that requires correction to protect the public.

The language of these bills is very broad, and their meaning is not very clear. At present, there is no disclosure of what abuse, what practice, the bills seek to prevent or to correct. One can testify on them only by making certain assumptions. One can fear that the bills, if enacted, could deprive the public of services which they look to banks to provide and which they may never be able to get unless banks provide it.

With respect to H.R. 9822, the assumption is that its purpose is to prohibit banks from leasing out unused time on their computers, and I shall deal with the bill on that assumption. The bill must proceed from a belief that it is contrary to the public interest for a bank to lease unused time on a computer it owns or rents, but that it is not contrary to the public interest for any other owner or renter of a computer to rent its time out to the public. In other words, it discriminates against banks having unused computer time, and in favor of corporations or others having unused computer time. In so doing it will prevent banks from owning or renting computers unless they can afford to absorb the expense of unneeded time. The convenience and service to others who might not otherwise be able to gain access to any computer will be denied to the public. Even more basically, so to restrain the use of privately owned personal property, without any showing of danger to the public interest or welfare, is a very drastic interference with traditional American freedoms.

We believe that banks should be permitted to make their data processing equipment available to third parties for a consideration. We think that this activity is entirely proper. Ordinarily a bank will acquire data-processing equipment primarily for its own use. The acquisition of such equipment is demonstrably needed by banks today in performing their functions as banks, and the equipment is expensive. Against that background, if open machine time on computers is available, we see no reason why a bank should be forced to leave its expensive equipment idle, and we see many benefits to the public from banks making unused computer time available. The enactment of H.R. 9822 would make it more expensive and, for many smaller banks, perhaps impossible to buy or lease expensive equipment needed in order to serve better the banking needs of the public.

Speaking for the trust company, we have over \$1 million of our stockholders' capital invested in computers and we spend over half a million dollars of annual expense in connection with them and other rented electronic equipment. Our operations are not yet fully converted to computer use, but we are working toward that objective as hard and as fast as we can. We have leased out time to others, and we would like to do so more if, when our operations are fully converted to computers, there is free time left on them. This will help reduce our net cost for the equipment and confer a benefit on others whose need for time is small and who otherwise might have no chance at all to get on a computer. So we urge you not to pass H.R. 9822.

Now let me turn, briefly to H.R. 9548. Here I must assume that tax report and payroll preparation by banks are under scrutiny.

The preparation of income tax returns is performed mostly by trust companies and the trust departments of banks. It is not a service offered to the public as such. Rather, it is an adjunct to the overall care of a customer's financial affairs which has been entrusted to the bank when the bank acts as fiduciary of family trusts, as investment adviser or manager for an individual portfolio, or as custodian for securities. From the investment point of view, the tax status of a beneficiary of a trust or the holder of an investment management account is of prime importance. It has a bearing on what kinds of investments should be held and what transactions made. Many customers of trust departments have their remittances budgeted after provision for real estate and income taxes, and so, in any intelligent and effective approach to a fiduciary customer's finances, it is necessary for the bank to be brought into the picture on the tax computation as well.

In the case of trusts, the Federal tax law requires the trustee to prepare fiduciary tax returns, and it is only a logical extension of this legal requirement for the bank to prepare the beneficiary's individual return if he wishes. Being in possession of information leading to the determination of an individual's gross income, the banking institution is best qualified, with least expense to the customer, to prepare the personal returns. This is especially true in the usual case when the only missing element is that of personal deductions. This is a vital service to customers of our trust company and one to which we feel that they are entitled.

It should be noted that it is very much in the interest of the Government that banks compute customers' taxes and prepare their returns. It makes for accuracy of tax reporting and prompt payment, and reduces the enforcement burden on the Internal Revenue Service. At the trust company we remit many millions of dollars on behalf of fiduciary customers whose returns we have prepared, and we are very proud of our record of accurate tax reporting.

Now, I will turn to the payroll services. Corporate payroll and bookkeeping chores, according to our experience as a trust company, are primarily performed for charitable organizations as distinguished from business corporations. Charities very often engage the custodial and investment advisory capacities of a trust company largely because such an institution is in a position to perform enumerated services at a fee which is much less than would be the cost if the corporation were to maintain a staff of its own for those fiduciary and ministerial functions. Under Federal law and otherwise, charitable organizations are being called upon more and more to make a disclosure of their activities and to render reports of their financial affairs. It is therefore not unusual, in fact almost to be expected, that charitable organizations will call upon their banks to render bookkeeping and payroll paying services.

Performances by banks of payroll service to corporations may become very important in the years ahead. We think that the complexities of modern payrolling will make it a necessary bank service, especially to small and moderate-sized businesses, for which their own payrolling is expensive and burdensome. Technically, payrolling is bound to come to computers, and only by using computers of others will small businesses be able to keep their payroll work from becoming very expensive.

Think for a moment of the computations and deductions that have to be made in today's complex payroll preparation and reporting. The Federal laws require employer withholding for employees' income taxes and social security payments (FICA), and employer reporting on them. The Treasury Department urges employers to withhold on a voluntary basis for savings bonds. In New York employers are required to withhold for employees' New York State income taxes. Further, by collective bargaining agreement or other arrangement, many employers withhold for union dues. Beyond that, voluntarily, many employers withhold for contributory pension, group life insurance, and medical and hospitalization plans, and for savings deposits. Finally, in an era when social responsibility permeates our entire society, many employers voluntarily withhold for community service agencies—in our city the Greater New York Fund.

The complexities of a payroll for the small business are a great burden. More and more they are turning to their banks for assistance. We, at present, are

providing this service for one moderate-size brokerage firm and one mutual savings bank, and we hope to be called on by other customers who find it expensive, burdensome, and technically beyond their capability without great expense to them. We believe that this is clearly a proper role for banks to perform in the interest of the public.

It might be argued that the exception clause in the bill would make it harmless. We think not. The bill makes it seem as though a bank is skirting illegality every time it engages in an activity described even though for a depositor, borrower, beneficiary, or principal. It would have to stop, look, and listen each time to determine whether an act was "a necessary incident to the proper discharge of its lawful functions as a depository, lender, trustee, or agent." We see no public interest requiring the Congress to place this added burden on banks, or to place the added burden of policing the prohibition on the supervisory agencies. The Congress should not pass a prohibition to stop practices which are clearly consistent with the banking industry's objective to serve the public well. So we urge the committee not to approve H.R. 9548.

STATEMENT OF ROBERT D. SYER, VICE PRESIDENT, BANK OF AMERICA, N.T. & S.A.,
LOS ANGELES, CALIF.

Mr. SYER. Mr. Chairman and members of the subcommittee, my name is Robert D. Syer of Los Angeles, Calif. I am a vice president of the Bank of America in charge of the bank's leasing division. I am grateful to the subcommittee for the opportunity to make a statement in opposition to H.R. 9822.

The proponents of this bill argue that the leasing of personal property is not traditionally a part of the banking business and, therefore, banks should be forbidden to do it by statute. Our answer to this argument is that if the banking industry is not to stagnate it must be permitted to explore continuously new types of services in order to fulfill the needs of our expanding economy. For example, many voices were raised in protest when the banks first began to engage in consumer lending and it was then argued that consumer lending was not traditional banking. Practically all banks now engage in consumer lending and I submit that the making available of funds for consumer lending through banking channels has been a substantial contributing factor in the growth of our major industries such as the automobile industry, home appliances, radio, and television. Direct leasing is no different. Merely because the direct leasing method of financing is new to banks is not a sound reason for prohibiting the use of the method.

During the past 10 years many industries found that there were definite advantages to them to lease production equipment and other personal property instead of purchasing it. The use of the leasing method freed substantial amounts of working capital for expansion purposes. The demand for leasing was thus created by the businessman and banks were called upon to finance the leasing transactions indirectly.

The Comptroller of the Currency requested his advisory committee of bankers to study the question of whether the banks should engage in direct leasing. The committee recommended to the Comptroller that the banks should be permitted to purchase personal property at the request of a customer and lease it to him. The Comptroller approved and the banks then began to engage in direct leasing.

Banking is a highly regulated industry but the objectives of most banking regulations adopted over the years are related to the safety of the depositor's money and the soundness of the general economy of the country. The permission given by the Comptroller of the Currency last March for national banks to purchase personal property at the request of a customer and lease it to the customer does not impair, in any way, the safety of the depositor's money. On the contrary, our experience has demonstrated clearly that direct leasing by banks is a useful tool filling a definite need and substantially contributing to the industrial growth of the country.

It is important to note that the banks are not permitted under this ruling of the Comptroller to stockpile quantities of personal property but can only purchase for lease when requested to do so by a customer.

The type of leasing that the Comptroller has authorized—so-called financial leasing—is but another means of furnishing term credit to the lessee. The

transaction takes the legal form of a lease because there are advantages in particular cases to the use of this form in preference to other forms of credit. However, the underlying purpose is no different from financing a borrower by means of a term loan secured by a chattel mortgage. The basic function of any bank is to use its deposits to make credit available to its borrowers, and leasing is merely another sound means of accomplishing this function.

It has been suggested that the banks are in some way intruding upon the rights of private leasing companies. It seems to us that inasmuch as this is basically a financial transaction, the banks have as much right as anyone to enter into this type of business. The same argument was raised in the 1930's when the banks first began to enter the financial business traditionally occupied by non-banking finance companies. The objections proved to be groundless and finance companies continue to prosper. We can exist side by side with the leasing companies and the competition is healthy and sound. We anticipate that the leasing companies will continue to prosper and will continue to receive sophisticated and well-rounded services from those banks which also engage directly in leasing.

It is becoming abundantly clear, in the operation of the leasing activity of our bank, that we are able to render better financial service because we are engaged in direct leasing. In many instances we were able to supply additional working capital or capital for other purposes to our good customers through the vehicle of leasing, where we might not have been able to satisfy the same requirements had we been excluded from direct lease financing. This is particularly true where the credit situation of the lessee is somewhat complex and one with which we have lived over a good number of years. Thus it seems obvious that the right should be reserved to all banks to offer a "complete" banking service.

Finally, the need for additional jobs has been universally recognized. Additional jobs are produced only by increasing the gross national product. An example of the Government's policy of encouraging expansion of industry is the 7-percent investment tax credit made available in connection with the acquiring of new production equipment. Similarly the banking service of direct leasing makes it possible for our customers to take advantage of the use of new production equipment without the necessity for large capital investment. The authority to lease is certainly a useful tool designed to help accomplish the goal of increasing our gross national product. We submit that there is no necessity for legislation forbidding the banks from using leasing as a financial tool.

We therefore respectfully submit that H.R. 9822 should not be enacted as law. Thank you.

(The following statements and letters were submitted for the record:)

STATEMENT SUBMITTED BY THE NATIONAL AUTOMOBILE DEALERS
ASSOCIATION IN SUPPORT OF H.R. 117

The National Automobile Dealers Association welcomes this opportunity to express its support of H.R. 117, a bill to prohibit banks from engaging in the business of personal property leasing.

The NADA is a national trade association comprised of nearly 22,000 franchised new car and truck dealers engaged in selling and servicing new and used cars and trucks of all makes, domestic and imported, in all 50 States.

Over the past two decades there has been a growing recognition on the part of NADA members that the automobile and truck merchant today must be more than just an automobile and truck dealer. He must be a transportation merchant. He must be concerned with every facet of transportation involving the use of his primary products, the automobile and truck. As a result, a large number of the Nation's dealers are now engaged in the business of leasing and renting of automobiles and trucks.

The NADA and its members submit that the March 18, 1963, ruling of the Comptroller of the Currency that leasing by a national bank—

"* * * of personal property acquired upon the specific request of and for the use of its customer, and the incurring of such additional obligations as may be incident to becoming an owner of personal property and the lessor thereof, is a lawful exercise of the powers of a national bank and necessary to the business of banking."

is clearly without the purview of the National Bank Act and constitutes a radical departure from long-established public policy that banks may not engage in businesses other than the business of banking.

As depositories of public funds, banks are charged, above all, with the duty of safeguarding the funds entrusted to them. Accordingly, the public interest with which banking is vested was recognized by the Congress when it enacted the National Bank Act and defined the powers of national banks, as follows:

"To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits, by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title." (12 U.S.C. 24, clause 7.)

Over the years since its enactment, this clause has been universally and uniformly interpreted by the courts to mean that national banks have no power to engage in business or commercial activities beyond that necessary to save them from loss. In addition, all prior Comptrollers of the Currency have ruled consistently that national banks are prohibited under the National Bank Act from acquiring and owning assets for the sole purpose of leasing them to others.

Direct leasing of automobiles and trucks is a highly specialized, competitive, and speculative business activity of a type prohibited by the National Bank Act, as interpreted by the courts.

It involves the acquisition of the motor vehicles to be leased and the sale of such vehicles at the conclusion of the lease period.

It requires highly specialized and knowledgeable leasing personnel. It involves legal and tax complexities which are magnified because of the mobility of motor vehicles and the lessor must at all times be certain that he is meeting all of the obligations of a motor vehicle owner in all of the States in which the vehicle he leases may operate.

It involves the question of whether or not the lessor must qualify to do business in all of the States in which the vehicles he leases may operate.

It requires extensive, aggressive advertising and merchandising—and this the banks have discovered as evidenced by the attached sample copies of advertisements of—

The Bank of America, San Francisco, Calif., in the July 1964 issue of "Fortune"—and it is interesting to note that this bank offers to "lease anything from a bulldozer to an office full of typewriters."

The First National Bank, San Jose, Calif., in the February 18, 1964, issue of the San Jose Mercury; in the April 21, 1964, issue of the San Jose News; and in the May 4, 1964, News Report on Business and Finance of the San Jose News.

The Franklin National Bank, Minneapolis, Minn., in the October 1965, issue of the Hennepin County Medical Society magazine.

To automobile and truck dealers, leasing is a means of rendering a real transportation service to a dealership's customers, leading to repeat customers and increased market penetration for the dealership and its make of car. From the dealer's standpoint, the only difference between the retail automobile and truck sales business and leasing is time. On the retail sales side, when the automobile or truck is sold, or a repair job is performed, the dealer knows the profit results of the transaction almost immediately. In leasing the actual profit results are not evident until the end of the lease term and the used vehicle is sold. This is so because much of the profit from lease operations is in the marketing of the used unit which must be sold at the right time even if it means giving the lessee another vehicle for the balance of the term of the lease.

At this point we call the committee's attention to the following letter of March 26, 1964, addressed to the chairman of this committee by the Honorable William McC. Martin, Jr., Chairman of the Board of Governors of the Federal Reserve System, commenting on H.R. 9822 introduced in the 2d session of the 88th Congress. H.R. 117, introduced in the 89th Congress, 2d session, is an identical bill to H.R. 9822.



Now you can lease major equipment directly from the bank.

Bank of America is the *first* major bank to offer a leasing service to its customers. You can lease anything from a bulldozer to an office full of typewriters. You can lease computers, plant equipment, construction equipment, electronic equipment, machine tools — any processing or production-type equipment that can be classified as personal property.

Just decide on the type of equipment you want, establish its specifications and cost and tell the bank. The bank will then buy exactly what you asked for, and lease it to you over

fixed terms at negotiable costs. When you handle your leasing arrangements this way you have all the advantages of dealing directly with the bank — quickly and easily.

If you'd like to find out more about leasing equipment directly from the bank or if you wish to discuss any of your industrial equipment financing needs, just let us know. Write Bank of America, Equipment Finance & Leasing Division, 341 Montgomery Street, San Francisco; or 630 South Spring Street, Los Angeles, California.

BANK OF AMERICA

MEMBER FDIC AND EQUAL OPPORTUNITY LENDER — MEMBER FINANCIAL INSTITUTIONS

© 1976 J.V. 1000 69

San Jose Mercury Tuesday, Feb. 18, 1964

**FIRST AGAIN!**

NOW! LEASE YOUR CAR FROM FIRST NATIONAL BANK

Businesses, individuals, fleet operators: learn how you can benefit from First National Bank's exclusive car leasing program.

Any make or model car is available from First National. Phone us and let us explain our new auto leasing plan.

It's another "first" for First National, Santa Clara County's leading automobile finance bank and the

only bank where you can lease a car. Lease with confidence! Phone Car Leasing, CYpress 4-4024 today for full information.

FIRST NATIONAL BANK AUTOMOBILE LEASING

First and Santa Clara Streets, San Jose • CYPRESS 4-4024

*** San Jose News
41 Tues., April 21, '64



Lease—or Buy?

Leasing new cars is better than buying for most businesses and many individuals. Now we can offer you either leasing or low-cost loans on all new cars. Because we have both types of new car financing, we can show you—in all honesty and without prejudice—which method is best in your case. Talk it over. Phone Car Leasing, Cypress 4-4024.

THE FIRST NATIONAL BANK
AUTOMOBILE LEASING

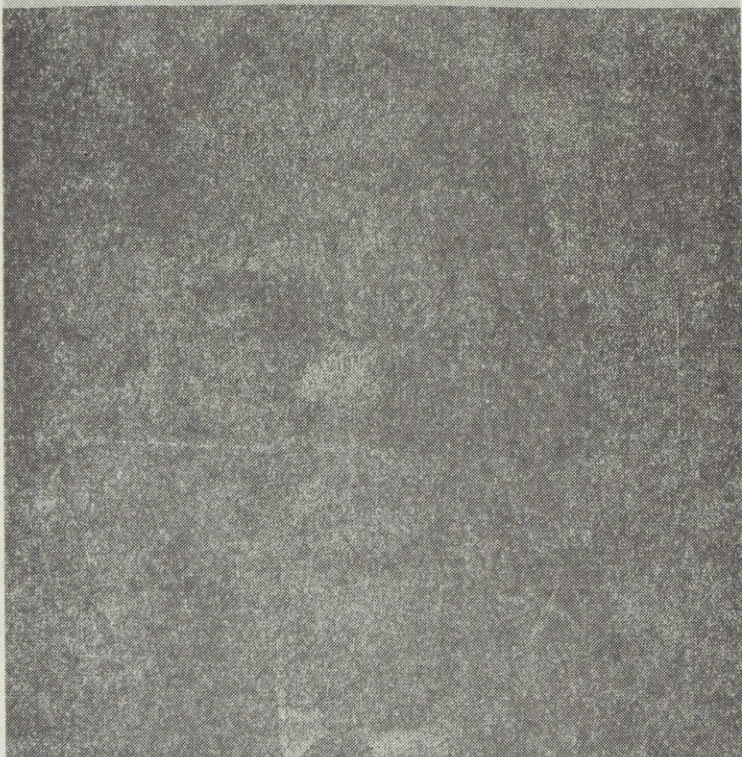
First and Santa Clara Streets, San Jose • Cypress 4-4024

9015

News Report on Business, Finance

52 Monday, May 4, 1934

San Jose News



Lease my car from the BANK?

There are many unique advantages only First National can offer you if you lease automobiles. You'll find this to be true whether you lease one car for personal use, or an entire fleet. Let us explain how this exclusive Bank Lease Plan works, won't you? Phone Car Leasing, CYpress 4-4024.

THE FIRST NATIONAL BANK AUTOMOBILE LEASING

First and Santa Clara Streets, San Jose • CYpress 4-4024

AT LAST!

Sensible Leasing Under a Bank Leasing Plan

To people of excellent credit standing, we offer the lowest cost leasing plan available. It is lowest in cost because:

- The car is purchased at nearly factory invoice.
- All lease payments are credited to the low purchase price.
- The car can be purchased at the end of the contract for the outstanding balance plus low bank carrying charge. This has always in the past been several hundred dollars less than the wholesale value of the car.

To give you a better idea of the cost involved, here are three "sample" lease arrangements on cars representative of low, medium, and high price classes.

- Chevrolet Impala 2-door Hardtop, fully equipped, including power steering and brakes, and carrying a list price of \$3,450.00:

Lease Term: 24 months
 Monthly Rent: \$80.00
 Purchase Option, end of term: \$1,160.00

- Pontiac Bonneville 4-door Hardtop, fully equipped, including power windows and air conditioning. List price \$4,750.00:

Lease Term: 24 months
 Monthly Rent: \$110.00
 Purchase Option, end of term: \$1,580.00

- Cadillac Sedan de Ville, All Power and Air Conditioning. List Price \$6,800.00:

Lease Term: 24 months
 Monthly Rent: \$160.00
 Purchase Option, end of term: \$2,400.00

Also, check us on medical equipment leasing!

Franklin National Bank

Auto Leasing Department

100 WEST FRANKLIN AVENUE

MINNEAPOLIS, MINNESOTA 55404

TELEPHONE 332-3222

OCTOBER, 1965

375

"The Honorable ABRAHAM J. MULTER,
*Chairman, Subcommittee on Bank Supervision and Insurance,
Committee on Banking and Currency,
House of Representatives, Washington, D.C.*

"DEAR MR. CHAIRMAN: This is in response to your request for the Board's views on H.R. 9822, a bill to prohibit banks from engaging in the business of personal property leasing.

"From your remarks on January 31, 1964, on the floor of the House, it appears that introduction of H.R. 9822 was prompted by the views set out in a letter of March 18, 1963, to the presidents of all national banks from the Comptroller of the Currency. As reprinted in his Manual for National Banks, paragraph 3400, the Comptroller's position on this matter is as follows:

"A national bank may become the owner and lessor of personal property acquired upon the specific request of and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. These transactions do not result in obligations subject to the lending limits set forth in 12 U.S.C. 84."

"In the opinion of the Board, 'leasing' of personal property by bank divides, broadly speaking, into two quite different kinds of transactions. As explained hereinafter, one kind is unobjectionable, and in fact may be advantageous to the bank or its customers. The other type, in the Board's judgment, is not a suitable activity for banks and should be discouraged or prohibited. Accordingly, the practice of 'leasing' by banks should not be either completely permitted or completely prohibited; the beneficial kind of lease arrangements should be permitted and the undesirable kind should be prevented.

"As you know, banks frequently make loans on the security of personal property, the bank being protected either by a physical pledge of the property or by a security lien thereon, usually in the form of a recorded chattel mortgage. But in certain circumstances, it seems, banks have found that the protection afforded by a chattel mortgage may not be entirely effective in the event of the borrower's insolvency, for example. For this reason and perhaps to gain other benefits for the bank or its customers, banks have sometimes extended credit by purchasing personal property and 'leasing' it to a customer for the full purchase price, instead of lending the customer the funds to purchase the property and then receiving a chattel mortgage thereon.

"An illustration may clarify this procedure. A bank's customer wishes to acquire 10 trucks costing \$10,000 each. Ordinarily, the bank would lend the customer the needed \$100,000, and the customer would purchase the trucks and give the bank a chattel mortgage, to protect it in the event of the borrower's default. Occasionally, however, a bank may prefer to purchase the trucks and then to 'lease' them to the customer, title being retained by the bank while the trucks are used by the customer. Under both arrangements, all other terms are substantially identical—for example, the customer might repay the bank \$25,000 semiannually, together with interest at 5 percent on the outstanding balance. In each case, at the end of 2 years the bank would have been repaid its \$100,000 advance with interest at the agreed rate, and the customer would then own the trucks free of any lien. In the case of chattel mortgage, the lien of the mortgage would be released after full repayment; whereas in the case of the lease arrangement, the bank would transfer title to the customer in accordance with the lease/sale agreement.

"In the opinion of the Board, such uses of lease arrangements are unobjectionable. They may provide the bank with the strongest possible lien to protect its extension of credit or the borrower with a form of credit best suited to its needs. To prohibit banks from 'leasing' property in this way would only deprive them of a useful security device.

"The other kind of leasing, however, is quite different in purpose and effect and in its status with respect to sound banking principles. It may be best to illustrate this in a comparable situation.

"In the case described above, the bank's customer might not wish to purchase the 10 trucks, but only to use them until the completion of a specific construction job, expected to take 6 months. In such a case, he might request the bank to purchase the trucks and to lease them to him for 6 months at a rental of \$40,000 for the 6-month period.

"If a bank purchased and leased the trucks in these circumstances, the transaction would not be a secured extension of credit, as in the other case. The bank would not be advancing \$100,000 in reliance on the promise of its customer to reimburse that amount to the bank, with interest. Instead of a security title,

as in the first case, the bank would acquire general ownership of the trucks with all the opportunities for gain and risks of loss inherent in the ownership and leasing of property. After the first customer had used the trucks for 6 months and paid the bank \$40,000 as stipulated in the lease agreement, the bank would be the owner of 10 used trucks in which it still had an investment of \$60,000, and it would be compelled either to sell the trucks at the best available price or to seek to lease them to one or more successive lessees. Depending upon the bank's skill and enterprise, and economic conditions, generally, and in the secondhand truck field (or truck-leasing business) specifically, the bank as an entrepreneur might emerge from the venture with a substantial loss or a substantial profit. In either event, however, the essence of the bank's operation would be the purchasing and leasing of equipment rather than the extension of secured credit, as in the case first described.

"The ruling of the Comptroller of the Currency, set forth above, might be read as purporting to authorize national banks to engage in leasing of the second type. This interpretation of his ruling seems to be supported by the statement therein that the transactions referred to by the Comptroller are not subject to statutory lending limits, since true extensions of credit through the lease/sale mechanism, the Board presumes, would be subject to the same limitations as other loan transactions. (If the Comptroller should actually take the position that extensions of credit are exempt from statutory limits when handled through lease arrangements, the situation would call for legislative correction.)

"The Board infers that H.R. 9822 was introduced with the purpose of preventing banks from engaging in leasing activities of the second type, as apparently approved by the Comptroller. The Board believes that such an objective would be sound. However, the provisions of the first section of the bill, read in connection with its title, might be construed as prohibiting not only the second type of transaction, but also the first, which the Board regards as an appropriate device for the extension of secured credit, as has been indicated.

"The Board does not know how the Comptroller's ruling has been interpreted and applied by national banks or the extent to which national banks and State banks engage in purchasing and leasing equipment and other personal property in an unsafe and unsound manner. It is likely that few, if any, banks will engage in such activities, in which case prohibitive legislation would be unnecessary. If, however, Congress should decide that legislation along these lines is desirable in any event, the Board suggests that such legislation be so drafted as not to prevent banks from using lease arrangements as a form of security for legitimate extensions of credit.

"Sincerely yours,

"WM. MCC. MARTIN, JR."

The NADA agrees in general with the foregoing observations of the Chairman of the Board of Governors of the Federal Reserve System and in order to be sure that the undesirable kind of leasing is prohibited and the beneficial type permitted, we suggest that perhaps H.R. 117 should be amended to read as follows:

"A BILL To prohibit banks from engaging in the business of leasing, renting, or selling personal property

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no bank of any type described in section 2 of this Act may purchase or otherwise acquire any personal property for the purpose and with the intent of leasing, renting or selling such property to any other person, partnership, or corporation: *Provided, however,* That nothing in this Act shall prohibit such bank from reselling any personal property acquired by such bank in satisfaction, in whole or in part, of any debt due such bank.

"Sec. 2. This Act shall be administered and enforced in the case of—

"(1) national banks or banks operating under the code of laws for the District of Columbia, by the Comptroller of the Currency;

"(2) banks (other than banks described in paragraph (1)) which are members of the Federal Reserve System, by the Board of Governors of the Federal Reserve System; and

"(3) banks (other than banks described in paragraph (1) or (2)) whose deposits are insured by the Federal Deposit Insurance Corporation, by the Board of Directors of the Federal Deposit Insurance Corporation.

"The Federal banking agencies specified in this section are respectively authorized to make such rules and regulations as may be necessary to carry out the purposes of this Act."

Aside from the legality of the Comptroller's rulings the NADA and its members feel that the entrance by national banks into the area of direct leasing of automobiles and trucks, pursuant to the Comptroller's ruling, would constitute unfair competition.

When a lessor takes leasing business away from another lessor, it usually means rate cutting. Unless the lessor can borrow money more cheaply, he doesn't have too many opportunities to undersell his local leasing competitors.

The commodity or stock in trade of a bank is money. The automobile or truck dealer "buys" money at the going market price. The bank generally is a "seller" of money. The cost of money differential between the bank and the dealer would unquestionably be to the detriment of the dealer.

This is clearly illustrated by the attached ad of the Franklin National Bank of Minneapolis, Minn.

In this ad the Franklin National Bank offers to lease three different makes of cars for 24 months with an option to purchase at the end of the lease period for a price which, according to the bank's advertisements, "has always in the past been several hundred dollars less than the wholesale value of the car."

An analysis of the terms of the leases offered for these three different cars clearly indicates that only the cost of acquisition plus interest is involved. Furthermore, it would seem clear from this advertisement that what the bank is in fact doing is offering to purchase these cars at a wholesale price for the purpose and with the intent of selling them to an ultimate consumer at a discount price. Thus, in this instance, we find a bank that is not only engaged in leasing vehicles but also engaged in the business of purchasing and selling vehicles at a discounted price. Certainly, activities of this type are commercial and wholly without the scope of banking as such is defined by the National Bank Act.

The Comptroller's ruling that banks may engage in direct leasing raises questions of equity and justice and the right to compete on equal terms under the law. The concept of equality of opportunity is a cornerstone of our society and the profit motive is the very foundation of the economy on which our society is sustained. Certainly there can be no equality of competitive opportunity when a bank can use the vast public funds at its resource in direct competition with local merchants in everyday commercial activities. In addition, all national banks are automatically covered by FDIC insurance which was never conceived as a measure to shelter unlawful and inappropriate banking practices and protect bank depositors from losses resulting from the banks engaging in speculative and commercial activities.

Furthermore, smaller banks which lack the experience and trained personnel necessary to qualify them to engage in direct leasing might well be tempted to enter this speculative field to their detriment and to the detriment of their depositors. In addition, the engaging in the business of direct leasing requires huge amounts of money which most small banks would not have available and this could only tend toward undue concentration of economic power on a few large banks.

In view of the foregoing, it is submitted that the Comptroller's ruling is not requisite to the public need nor is it in the public interest. If the Comptroller can by administrative fiat distort the intent of the National Bank Act and ignore completely the courts' interpretations of that act by permitting national banks to engage in direct leasing, it can only open the door to abuses of the type Congress has wisely legislated against.

For the reasons stated above, the National Automobile Dealers Association and its members heartily endorse and strongly urge the prompt enactment of legislation to nullify the Comptroller's illegal ruling and prohibit national banks from engaging in the business of direct leasing of personal property.

AMERICAN AUTOMOTIVE LEASING ASSOCIATION,
Chicago, Ill., March 22, 1966.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance, Committee on Banking and Currency, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MULTER: I am president of the American Automotive Leasing Association, and I write on behalf of the membership of the association to express our support of H.R. 117, 89th Congress, 1st session, a bill to prohibit banks from engaging in the business of personal property leasing.

The association was organized on November 25, 1955, as a nonprofit corporation under the laws of the State of Illinois. It is a trade association composed of long-term leasing companies engaged in the business of leasing automobiles to commercial and industrial lessees for periods of 1 year or more. A recent survey of the association membership disclosed that approximately 80 member companies had on lease approximately 260,000 vehicles representing an investment of approximately \$700 million.

Automotive leasing companies do not maintain stocks or inventories of vehicles on hand, and it is only when a leasing company has obtained a lease arrangement from a particular lessee that the company purchases the vehicles from retail automobile dealers in order to satisfy the requirements of the particular lease. Since, in most instances, the vehicles are delivered to the lessees or their employees in various parts of the country, the purchase of these vehicles by leasing companies may take place anywhere in the country (usually near the point of delivery to the particular lessee). The leasing company purchases the cars which meet the exact color, type, and model description requested by the lessee and arranges for delivery of the vehicles, already serviced, at the time and places designated by the lessee. Usually, the leasing company has arrangements of long standing with retail automobile dealers in all the major commercial areas of the country which enable it to provide efficient systems of procuring vehicles on schedule and delivering them completely serviced to lessees anywhere in the United States.

If a particular lease calls for maintenance and repair by the lessor, the lessor arranges for such maintenance and repair (which includes delivery of replacement tires, parts, etc.) all over the United States, through previously selected and responsible automobile service and parts agencies. If the lease does not provide for maintenance by the lessor, the lessor usually keeps the lessee informed nonetheless of the best available service facilities and provides the lessee with information and advice as to reasonable cost for those particular services best designed properly to maintain the vehicle during the term of the lease. The lessor obtains complete insurance coverage for the leased vehicle if the lease so requires; if the lease requires the lessee to provide the insurance, the lessor nonetheless is named as an additional assured; and in either case the lessor keeps a complete record of the insurance coverage in order to be sure that all parties are completely protected.

The leasing company licenses and titles the vehicles in its own name in the States where the lessee advises that the vehicles will be initially or principally domiciled, arranges for change of title and licensing when a vehicle is subsequently domiciled in other locations, and is responsible for and arranges for payment of all local licenses, taxes, traffic violations, etc., arising out of the operations of the leased vehicles, since such demands are made against the lessor because he holds title. At the termination of the lease, the lessor takes delivery of the vehicles from the lessee at the locations specified by the lessee (in many cases these are areas and States far removed from the locations where the vehicles were initially delivered to the lessee) and arranges through selected local automobile dealers or used car dealers for the vehicles to be serviced and sold as used vehicles on the most advantageous terms. In many instances, the lessor may remove vehicles from where they were returned to an entirely different locale in the hope of finding more favorable market conditions there for the disposition of used cars.

It is apparent that the services rendered by the lessor to the lessee during the term of the lease involve activities in States far removed from the home office of the lessor, and these activities frequently involve the lessor in all variety of problems relating to "doing business" in foreign States throughout the country. Claims for State income and franchise taxes against lessors wherever their cars are being operated are common, and demands for State audits of lessors' books have become frequent.

For a bank to attempt to undertake to provide the generally expected services which lessees are now receiving from responsible commercial automotive leasing companies would necessarily involve the banks in activities which they are not equipped to pursue and which would create a host of legal problems and difficulties with which banks should not be confronted. For example, a bank in Illinois would find difficulty in licensing, titling, and operating a vehicle in its name in the State of Mississippi or California. Accident claims made against a lessor sometimes take years to adjudicate. Moreover, even though the lessor may be covered completely by insurance, the production of witnesses and evidence years after a lease has terminated, the legal obligations and involve-

ments in such matters as the implied warranty of the lessor that a leased vehicle is in good operating condition during the entire term of the lease, the responsibility for the leased vehicle being used only in legal activities, and the obligation for traffic violations and other operational incidents are all normal recurring problems arising out of commercial activities which are foreign to the operations of banks. Indeed, we believe that the inability of banks to provide these services effectively may well cause a deterioration in the current acceptance of commercial automotive leasing which independent and responsible leasing companies have built up during the past 25 years.

In addition to these practical and legal difficulties which will confront a bank when it assumes the role of the lessor of automotive vehicles, we would like to point out that when a bank undertakes to engage in automotive leasing, it will more often than not be competing with its own customer (the leasing company) and that such competition is unfair competition. A typical example of such unfair competition is furnished by the experience of a leasing company in Milwaukee, Wis. Starting in 1958, this automotive leasing company leased approximately 800 vehicles to a Milwaukee company. As of December 31, 1963, there were 799 vehicles on lease at a cost of \$2 million. After the Comptroller of the Currency issued his ruling authorizing national banks to lease personal property, the lessee informed the leasing company that it (lessee) was entering into an arrangement with its bank (which was also the leasing company's bank), whereby the bank would furnish it with replacement vehicles as the vehicles under lease reached their stipulated termination date. This effectively put an end to the leasing company's lease arrangement. The leasing company was advised further that the bank was charging the lessee for the leasing services the exact same amount which it had formerly charged the leasing company for the funds required by the lessor to procure the vehicles, and that the bank was waiving the 1 percent per month added charge which the leasing company had charged the lessee for the services of procuring and delivering the vehicles, servicing the lessee during the term of the lease (including responsibility for all claims made in connection with the ownership of the leased vehicles), and for the services in disposing of the vehicle. In this situation, the bank, because of its ability in effect to obtain funds more cheaply than its leasing company customer, was able to take away from that customer an account which had been built up over a period of more than 5 years and which had been serviced to the complete satisfaction of the lessee. In one lease contract the leasing company was deprived of a gross income of \$150,000 per year, on which there was an approximate net income of \$36,000 after deducting the lessor's expenses of operations on these leased vehicles. It must also be noted that the lessee was already a customer of the bank, and the economic pressure in such a situation is obvious.

It does not take much imagination to appreciate that not many similar incidents are required to put banks well on the road to undermining completely the businesses of their leasing company customers who formerly serviced such lessees.

We have been advised that many bank counsel have expressed serious doubts as to the legality of national banks engaging in such nonbanking business as the direct leasing of motor vehicles and other personal property. It is also our understanding that many banks have as yet refrained from engaging in this type of commercial enterprise because of the pendency of H.R. 117, and it is largely for these reasons that the full impact of the Comptroller's ruling has not yet been felt by the leasing industry. The really serious damage will arise in the future should the Congress fail to enact legislation such as H.R. 117.

In this connection, I submit herewith a memorandum from our counsel which expresses the view that direct leasing of personal property by national banks is not authorized under existing statutes and decisions.

We appreciate very much the opportunity of submitting this letter for your consideration and for the record.

Respectfully submitted.

JOHN ROLLINS, *President.*

MEMORANDUM FOR THE AMERICAN AUTOMOTIVE LEASING ASSOCIATION CONCERNING
THE MARCH 18, 1963, RULING OF THE COMPTROLLER OF THE CURRENCY

On March 18, 1963, the Comptroller of the Currency ruled that the leasing of personal property acquired by a national bank upon the specific request of and for the use of its customers is a lawful exercise of the powers of a national

bank and necessary to the business of banking, notwithstanding the incurring of such additional obligations as may be incident to becoming the owner of such property. Shortly thereafter, on April 30, 1963, he supplemented this ruling with another one in which he stated that in a lease transaction the bank's lending limits were not applicable. "The fact that the sum of the lease rentals might exceed the bank's loan limit is without bearing, since such remittances are not repayments on a loan but payments for the use of property owned by the bank."

In these two rulings the Comptroller has authorized national banks to engage fully in the commercial enterprise of personal property leasing in competition with independent commercial leasing companies, large and small.

The description of the authority purported to be given to national banks in terms of purchasing property "upon the specific request of and for the use of" a customer is no limitation upon the scope of the authorized leasing activity because, as has been stated, "all leasing companies purchase property only to satisfy specific lease requirements and do not stock or inventory property generally for leasing purposes, and this is true, not only with respect to equipment leasing, but also with respect to automotive leasing."¹

The authority which the Comptroller has purported to give to national banks for the first time finds no support in any legislation and, indeed, is the kind of nonbanking commercial enterprise which the National Banking Act, as construed by the courts, has prohibited national banks from engaging in. The authorization for national banks to engage in the commercial leasing business presents dangers for the banks, for their depositors, and for the public, and certainly provides unfair competition for commercial leasing companies. If the Comptroller's ruling is sound, then there is nothing to prevent national banks from selling automobiles or other equipment at retail on credit. Indeed, a stronger argument can be made for such activity because the element of debt, not present in the lease transaction, is present in the case of a sale.

The Comptroller purports to support his ruling by one section of the National Banking Act—paragraph 7 of 12 U.S.C. 24—which provides that a national bank shall have power:

"Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this chapter. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided*, That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe * * *"

It is our opinion that paragraph 7 offers no support whatsoever for the Comptroller's ruling. This paragraph as we shall show, has consistently been construed by the courts to prohibit national banks from engaging in this kind of commercial enterprise.

A. The "business of banking," permitted to national banks under paragraph 7, 12 U.S.C. 24, includes only those powers which are expressly granted in said paragraph

The Comptroller attempts to support his ruling on the ground that the meaning of the phrase, "the business of banking," as used in paragraph 7, is not limited to the powers and activities specified in said paragraph.² His position

¹ See hearings before the Subcommittee on Bank Supervision and Insurance of the Committee on Banking and Currency, House of Representatives, 82d Cong., 2d sess., on H.R. 9548 and H.R. 9822, Feb. 25 and 26, 1964, p. 148.

² The Comptroller has stated his construction of paragraph 7 as follows:

"This Office has given careful study over an extended period of time to the question of a national bank's authority to engage in the direct leasing of personal property. This study resulted in our letter of March 18, 1963. Paragraph 7 of 12 U.S.C. 24 clearly authorizes a national bank to exercise 'all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating * * * evidences of debt: * * *'. The use of a semicolon at the end of the first clause of the paragraph indicates that the 'business of banking' is not limited to the transactions described in the suc-

Footnote continued on following page.

is contrary to the established precedents and to the fair meaning of the National Banking Act. It is a settled interpretation of the act that national banks can exercise only those powers which are expressly granted by the act or which are incidental and necessary to the effectuation of the powers specifically conferred therein. In *First Nat. Bank v. Nat. Ex. Bank*, 92 U.S. 122, the Supreme Court construed paragraph 7 as follows:

"A national bank can 'Exercise by its Board of Directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing and circulating notes.' R.S., sec. 5136, par. 7; 13 Stat. at L., 101, sec. 8.

"Authority is thus given to transact *such a banking business as is specified*, and all incidental powers necessary to carry it on are granted. These powers are such as are required to meet all the legitimate demands of the authorized business, and to enable a bank to conduct its affairs, within the general scope of its charter, safely and prudently." [Emphasis added.]

In *California National Bank v. Kennedy*, 167 U.S. 362, 366-367, the Court again declared:

"It is settled that the United States statutes relative to national banks constitute the measure of the authority of such corporations, and that they cannot rightfully exercise any powers except those expressly granted or which are incidental to carrying on the business for which they are established * * *. No express power to acquire the stock of another corporation is conferred upon a national bank, but it has been held that, as incidental to the power to loan money on personal security, a bank may in the usual course of doing such business accept stock of another corporation as collateral, and by the enforcement of its rights as pledgee it may become the owner of the collateral and be subject to liability as other stockholders * * *. So, also, a national bank may be conceded to possess the incidental power of accepting in good faith stock of another corporation as security for a previous indebtedness. It is clear, however, that a national bank does not possess the power to deal in stocks. The prohibition is implied from the failure to grant the power."

And in *Texas & P.R. Co. v. Pottorff*, 291 U.S. 245, at 253, Mr. Justice Brandeis stated with respect to the powers of national banks under paragraph seventh that:

"First. National banks lack power to pledge their assets to secure a private deposit. The measure of their powers is the statutory grant; and powers not conferred by Congress are denied. For the Act under which national banks are organized constitutes a complete system for their government . . ."³

Footnotes continued from previous page.

ceeding clauses. It is not necessary to fit lease financing into the narrow confines of the negotiation of an evidence of debt. It is, in fact, necessary to the business of banking to recognize as was stated in the letter of March 18, 1963, that 'the leasing by the bank of personal property acquired upon the specific request of and for the use of its customer, and the incurring of such additional obligations as may be incident to becoming an owner of personal property and the lessor thereof, is a lawful exercise of the powers of a national bank and necessary to the business of banking.'

See hearings before the Subcommittee on Bank Supervision and Insurance of the Committee on Banking and Currency, House of Representatives, on H.R. 9548 and H.R. 9822, 88th Cong., 2d sess., pp. 117-118 (1964).

³ Compare *Inland Waterways Corp. v. Young*, 309 U.S. 517, which involved the question of whether a national bank could pledge assets to secure deposits made by Federal agencies. Sec. 45 of the act "commanded" the Secretary of the Treasury to exact security for "public moneys" deposited by him in national banks. In determining the question presented, the Court noted that there had been a policy and practice of securing Government deposits which antedated the enactment of the National Banking Act, and it stated that the act had to be "projected" against this background, "intended as it was to provide facilities for the deposit of Government funds." 309 U.S. at 522. Placing sec. 45 in its historical setting, the Court refused to read it in a "niggardly spirit", but read it as an exaction of duty from the Secretary as to moneys subject to his control, and not as a limitation upon the power of the bank to give security when it may be required by other Government officers and agencies charged with the custody of Federal funds.

However, in *Yonkers v. Downey*, 309 U.S. 590, decided shortly after *Inland* by a unanimous Court, the Court again held that national banks lacked power to pledge assets to secure private deposits, saying: "*Texas & P.R. Co. v. Pottorff* * * * authoritatively interpreted the National Banking Act and approved the view that under this, a national bank possesses no inherent power to secure deposits, public or private, by pledging assets, and that such a pledge is both ultra vires and contrary to public policy. The measure of their powers is the statutory grant, and powers not conferred by Congress are denied." 309 U.S. 596.

The Comptroller's construction of paragraph 7 is contrary to its plain meaning, and the argument that he advances in support of that construction is not persuasive. His sole argument is apparently that the use of a semicolon after the phrase "business of banking" and before the specific grants of authority which follow that phrase indicates that the "business of banking" is not defined and limited by the enumerated powers and activities. See footnote 2, *supra*, pages 3-4. It is clear, however, that the clauses after the phrase "the business of banking", which are introduced with the word "by", define and circumscribe the nature of that business. It is clear that the word "by" as used in paragraph 7 necessarily means "through the medium of" and describes how the business of banking may be exercised. Otherwise, the specific grants of power that follow the phrase, "business of banking", are unrelated to and give no meaning to the rest of the paragraph. Moreover, it seems to us that if Congress had intended that the powers specified in paragraph 7 were not to limit the scope of the phrase the "business of banking", it would not have indicated such intention merely by use of a semicolon which, in the context of the act, imparts no special meaning. For example, it might have drawn the statute to read: "To exercise * * * all such incidental powers as shall be necessary to carry on the business of banking; and to discount and negotiate * * *." Or, it might have used the more familiar language employed in statutory grants of power of granting "the power to engage in the business of banking, including, but not limited to, the power to discount * * * etc."⁴

It is clear from the foregoing that the "business of banking" is fully described by the specific grants of authority contained in paragraph 7. It is clear also that the statutory grant to exercise "such incidental powers as shall be necessary" to carry on the "business of banking" does not enlarge the nature of the business of banking, but merely authorizes incidental activities necessary to the exercise of the specific grants of power. As the Supreme Court stated in *First National Bank v. Missouri*, 263 U.S. 640, 659:

"* * * The mere multiplication of places where the powers of a bank may be exercised is not, in our opinion, a necessary incident of a banking business, within the meaning of this provision. Moreover, the reasons adduced against the existence of the power substantively are conclusive against its existence incidentally; for it is wholly illogical to say that a power which, by fair construction of the statutes, is found to be denied, nevertheless exists as an incidental power. Certainly, an incidental power can avail neither to create powers which, expressly or by reasonable implication, are withheld, nor to enlarge powers given; but only to carry into effect those which are granted."

Similarly, the Court of Appeals for the Seventh Circuit said in *Kimen v. Atlas Exchange Nat. Bank*, 92 F. 2d 615, 617, certiorari denied, 302 U.S. 650, that—

"National banks may rightfully exercise only such powers as are expressly granted and such as are necessarily incidental to the effectuation of their chartered purposes. Incidental powers can avail neither to create powers which

⁴In this regard the statutory predecessors of par. 7, 12 U.S.C. 24, make it clear that the business of banking was defined and limited by the enumerated powers. Sec. 11 of the National Currency Act of 1863, 12 Stat. 668, the statute which created the national banking system, provided that banks—

"* * * shall have power to carry on the business of banking by obtaining and issuing circulating notes in accordance with the provisions of this Act; by discounting bills, notes, and other evidences of debt; by receiving deposits; by buying and selling gold and silver bullion, foreign coins, and bills of exchange; by loaning money on real and personal security, in the manner specified in their articles of association, for the purposes authorized by this Act, and by exercising such incidental powers as shall be necessary to carry on such business; * * *"

Sec. 8 of the National Banking Act of 1864, 13 Stat. 101, which superseded the National Currency Act of 1863, similarly limited and defined the business of banking to the powers listed therein. As enacted by the Congress, sec. 8 did not have a semicolon after the phrase "the business of banking". Rather, it read as follows:

"* * * and exercise under this Act all such incidental powers as shall be necessary to carry on the business of banking by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; by obtaining, issuing, and circulating notes according to the provisions of this Act; * * *"

The semicolon upon which the Comptroller bottoms his ruling apparently was added in the Revised Statutes of 1874 as a grammatical, and not a substantive, change. Rev. Stat., § 5136 (1874).

See also House of Representatives Rept. 583, 66th Cong., 1st sess., p. 1 (1924), which emphasizes the extremely limited grant of powers to national banks under their corporate charter to engage in the business of banking.

expressly or by reasonable implications are withheld nor to enlarge the powers granted. They are inferred and exist only to carry into effect such powers as are granted."

B. The specific grants of authority to national banks set forth in paragraph 7 do not include the power to engage in the direct leasing of personal property, nor is the authority to engage in such leasing a necessary incident to the exercise of any authority specifically granted

The specific grants of authority contained in paragraph 7 do not empower a national bank to engage in direct lease transactions. Nor does the Comptroller contend that they do. Neither the authority to discount and negotiate evidences of debt nor the authority to loan money on personal security provide authority to engage in the business of leasing personnel property.

A lease transaction is ordinarily not a debt transaction. As the court stated in *Evans v. Kroh*, 284 S.W. 2d 329, 330-331 (Ky. Ct. App.):

"The basic idea of 'debt', as a legal term, is that an obligation has arisen out of contract, express or implied, which entitles the creditor unconditionally to receive from the debtor a sum of money which the debtor is under legal, equitable, or moral obligation to pay without regard to any future contingency * * *

"There was an obligation to pay rent under the lease contingent upon the peaceable enjoyment and possession of the premises. The obligation to pay rent was not an unconditional one, since it was contingent upon the future use and enjoyment of the leased property by Kroh and could be terminated by eviction. The relationship of lessor-lessee is not always coexistent with that of debtor-creditor, since the latter relationship arises only upon the failure of the lessee to pay the rent agreed upon at the time in the future fixed by the lease. An interruption of the peaceable enjoyment and possession of the leased property under certain circumstances would excuse the lessee from the obligation to pay any future rental."

Moreover, even in the unusual case where it may be contended that a particular transaction in the form of a lease creates a debt obligation, the direct leasing by a bank in such circumstances is not the "discounting or negotiation" of an evidence of debt, which is the only authority granted to the bank in this regard. The Comptroller specifically recognizes this limitation on bank authority when he argues that "It is not necessary to fit lease financing into the narrow confines of the negotiation of an evidence of debt." See note 2, pp. 3-4, supra.

The authority to loan money on personal security obviously does not authorize the direct leasing of personal property by a bank any more than it authorizes the direct sale of personal property on credit by a bank. The Comptroller himself has so stated in his April 30, 1963, ruling, wherein he held that:

"The purchase by the bank of personal property incidental to a lease thereof does not constitute a loan to the lessee, even if it is contemplated that title to the property will be transferred to the lessee upon termination of the lease.

"Likewise, the fact that the sum of the lease rentals might exceed the bank's loan limit is without bearing, since such remittances are not repayments on a loan but payments for the use of property owned by the bank."

Finally, it cannot be contended that the power to engage in direct personal property leasing is an incidental power necessary to enable a national bank to exercise the authority to discount or negotiate an evidence of debt, or to loan money on personal security. An "incidental power" is a power which enables a bank to do all things in connection with the performance of the specific activities authorized by paragraph Seventh; it does not empower a bank to engage in other activities and enterprises instead of those granted to it by the statute. *First National Bank v. Missouri*, 263 U.S. 640; *Kimen v. Atlas Exchange Nat. Bank*, 92 F. 2d 615, certiorari denied, 303 U.S. 650. For example, in order to secure and realize upon a defaulted loan entered into pursuant to the express powers conferred by the act, a bank may acquire and temporarily operate a commercial enterprise for the purpose of selling that enterprise. It may not, however, continue to operate the enterprise as a speculative, profitmaking business activity. See *First National Bank v. Converse*, 200 U.S. 425; *Atherton v. Anderson*, 86 F. 2d 518, reversed on other grounds, 302 U.S. 643; *Birdsell Mfg. Co. v. Anderson*, 104 F. 2d 340 (C.A. 6), *Cooper v. Hill*, 94 Fed. 582 (C.A. 8); see also *Cooper Tire & Rubber Co. Employees' Retirement Fund v. C.I.R.*, 306 F. 2d 20 (C.A. 6). Other examples are set forth infra.

C. Quite apart from the foregoing specific limitations set forth in paragraph Seventh of 12 U.S.C. 24, the authority to engage in the business of banking does not include the authority to engage in the business of personal property leasing

We believe that the foregoing sections of this memorandum, without more, have established conclusively the invalidity of the Comptroller's March 18, 1963, ruling. However, even if, for the purpose of argument, it is assumed that the "business of banking" is not limited to the activities specified in paragraph Seventh, the power to engage in the business of personal property leasing is nevertheless beyond the scope of the authority of a national bank since it is a mercantile, nonbanking activity.

It is well settled that national banks cannot engage in the business of buying and selling personal property for profit.⁵ See *First National Bank v. Stokes*, 134 Ark. 368, 203 S.W. 1026; *First Nat. Bank v. McKown*, 73 Okla. 310, 176 P. 245; *Atlantic Nat. Bank v. Korrick*, 29 Ariz. 468, 242 P. 1009; 29 Op. A.G. 59, at 64; 10 Am. Jur. 2d, Banks and Banking, § 288. And, although banks may purchase a sight draft with a bill of lading attached, since the bill of lading represents security for the payment of the draft by the purchaser of the goods (*Lewis Leonhardt & Co. v. W. H. Small & Co.*, 117 Tenn. 153, 96 S.W. 1051), they cannot purchase a bill of lading. As the court said in *First Nat. Bank v. First Nat. Bank*, 247 Pa. 40, 92 Atl. 1076, 1078: "It is very clear that a contract to purchase bills of lading differs essentially from an agreement to purchase sight drafts. A bill of lading represents the goods which are in transit, and its purchase would mean the purchase and control of the goods. The trial judge very properly held that, under the terms of its charter, a national bank had no authority to engage in such a transaction."

Similarly, banks have no power, express or implied, to engage in other commercial activities beyond that necessary to save them from loss in connection with a preexisting indebtedness. *Atherton v. Anderson*, 86 F. 2d 518 (C.A. 6) reversed on other grounds, 302 U.S. 643 (manufacturing business); *Birdsell Mfg. Co. v. Anderson*, 104 F. 2d 340 (C.A. 6) (manufacturing); *Cooper v. Hill*, 94 Fed. 582 (C.A. 8) (mining business); *Cockrill v. Abeles*, 86 Fed. 505 (C.A. 8) (operation of cotton mill); *Gress v. Village of Ft. Laramie*, 100 Ohio St. 35, 125 N.E. 112 (urban railroad); *Shawnee National Bank v. Parcell Wholesale Grocery Co.*, 34 Okla. 34, 124 Pac. 603 (construction business). As the Supreme Court stated in *First Nat. Bank v. Converse*, 200 U.S. 425, at 439: "To concede that a national bank has ordinarily the right to take stock in another corporation as collateral for a present loan or as a security for a preexisting debt does not imply that, because a national bank has lent money to a corporation, it may become an organizer and take stock in a new and speculative venture; in other words, do the very thing which the previous decisions of this Court have held cannot be done."

The business of leasing personal property directly to lessees is a commercial activity of the type that national banks traditionally have been prohibited from engaging in. In the first place, that business involves, on a continuing basis, the purchase of commodities, vehicles or equipment, the lease (sale of the use) of such property to lessees, and then in most cases the sale or other disposition of the leased property at the end of the lease period. In *Philber Equipment Corp. v. Commissioner of Int. Rev.*, 237 F. 2d 129 (C.A. 3), the court of appeals stated that the vehicle leasing business there involved was "a going operation which involves continuous rental, purchase and sale," and that "The acquisition and disposition of equipment was an essential aspect of the business of renting equipment * * *" (237 F. 2d 131, 132).

Moreover, the lessor incurs a host of responsibilities and obligations which further belie any contention that leasing is merely a financial, rather than essentially a commercial, operation. These responsibilities and obligations not only arise out of the lessor's ownership of the property, but often are a necessary consequence of the commercial relationship between lessor and lessee. For example, the lessor must insure that the lessee has the use and quiet enjoyment of the property throughout the term of the lease. He also may be obligated to pay taxes on the purchase, use or sale of the leased property; to file tax returns in the various jurisdictions where the property is located or used; to obtain compulsory and other insurance coverage required by the various localities; and to defend lawsuits which might arise out of the use of the equipment by the

⁵ Of course, banks may sell property which they acquire in enforcement of a defaulted loan.

lessee by virtue of the lessor's ownership thereof. In this latter respect, a recent State court decision holds that the lessor may be held absolutely liable for injuries to the lessee's employees caused by defects in the leased property on the ground that the lessor impliedly warrants the fitness of that property. Moreover, in the case of automobile leasing, where the legal complexities are magnified by the mobility of motor vehicles, the lessor must at all times be certain that he is meeting all of the obligations of a motor vehicle owner, including titling and licensing of the vehicles, in all of the States in which the vehicles he leases are or will be operated. There is also the question of whether the lessor must qualify to do business in all of the jurisdictions in which the vehicles are operated. As owner of the vehicles, the lessor may even be responsible for paying traffic and parking tickets, which can become burdensome and time consuming for a leasing company where vehicles bearing license plates issued in its name are operated by lessees throughout the country.⁶

In the light of all of the obligations, duties, and functions assumed by the lessor of personal property, the Comptroller's contention that leasing is a mere financial transaction is wholly without merit and not persuasive. And it must be remembered, in this connection, that, as the Comptroller concedes, in the direct lease transaction there is no debt obligation running in favor of the lessor. The fact that in some instances the lessee may have the primary responsibility for "property management," and the fact that the Comptroller's ruling does not authorize banks to inventory property for leasing purposes, are irrelevant and beside the point. See *Philber Equipment Corp. v. Commissioner of Int. Rev.*, 237 F. 2d 129 (C.A. 3). The commercial leasing business "involves continuous rental, purchase and sale" *Philber Equipment Corp. v. Commissioner of Int. Rev.*, 237 F. 2d 129, at 131, and the fact that a leasing company purchases its property for leasing purposes after, and not before, it knows who its customer is does not convert this commercial, mercantile enterprise into a banking transaction.

D. The participation of national banks in direct leasing constitutes unfair competition for private leasing companies

Thus far, we have confined our discussion to the question of the legality of the Comptroller's ruling authorizing banks to engage in direct leasing. However, no discussion of this issue would be complete without mentioning the fact that the participation of banks in the business of direct leasing constitutes unfair competition for the private leasing companies. As was stated in a statement submitted to this subcommittee in connection with hearing on H.R. 9822:⁷

"The Comptroller claims that granting banks authority to [own] and lease property has the purpose of devising "less costly or more effective means of serving consumers." If this is so, it is mainly because banks obtain much of their funds through non-interest-bearing deposits. The privilege of accepting the public's deposits endows banks with a singular economic advantage which, if banks engage in competition with ordinary business corporations, favors the banks. Commercial banks pay no interest on demand deposits but ordinary businesses do pay interest on the money that they borrow from banks. Using the Comptroller's logic, banks should engage in any business activity in which interest expense is a major cost and thus cut cost to the consumer. An extension of such logic is that, if banks may engage in ordinary business ventures, regular business should be allowed to accept the public's deposits. Either premise is, of course, fallacious."

SEPTEMBER 26, 1965.

HON. JAMES J. SAXON,
Comptroller of the Currency,
Department of the Treasury,
Washington, D.C.

DEAR JIM: I notice from newspaper accounts that the First National City Bank is about to acquire the Hilton's carte blanche credit-card business.

I understand that the Bank of America also has acquired a credit-card business.

⁶ The responsibilities, obligations, and legal and tax problems of a lessor, and the complex problems which they would create for banks which engage in direct leasing, is discussed more fully in Zises, "Equipment Leasing by Banks," reprinted in hearings before the Subcommittee on Bank Supervision and Insurance of the Committee on Banking and Currency, House of Representatives, 88th Cong., 2d sess., on H.R. 9548 and H.R. 9822, at p. 93.

⁷ Hearings before the Subcommittee on Bank Supervision and Insurance of the Committee on Banking and Currency, House of Representatives, 88th Cong., 2d sess., on H.R. 9548 and H.R. 9822 (1964), p. 88.

I hope that you will agree with me that this is not an extension of credit that banks should engage in. This, on the contrary, is an insurance business. The credit-card business, as you know, is operated by soliciting anybody and everybody who will pay them an annual membership fee of \$5 for joining the "club," as a result of which and without checking credit, they have a right to obtain credit wherever they go for entertainment purposes, dining purposes, and all kinds of purchases of goods. The merchant has no hesitancy in extending the credit because the credit is guaranteed by the credit-card company for which a charge of anywhere from 6 to 8 percent is made to the merchant by the credit-card company. The charge to the merchant by the credit-card company is in the nature of a premium for an insurance or guarantee contract. This is not banking business.

Credit should be extended by a bank only after proper investigation and determination that the individual or company seeking the credit is entitled to it. This is never done in connection with the credit-card business.

I will be pleased to have your comments at your early convenience.

With warm regards, I am,

Sincerely,

ABRAHAM J. MULTER.

* * *
THE COMPTROLLER OF THE CURRENCY,
THE ADMINISTRATOR OF NATIONAL BANKS,
Washington, October 14, 1965.

HON. ABRAHAM J. MULTER,
House of Representatives,
Washington, D.C.

DEAR MR. MULTER: This is in reply to your letter of September 26, 1965, in which you request our comments concerning the acquisition of the Hilton Corp.'s carte blanche credit-card business by the First National City Bank of New York. You state that you understand that the Bank of America has also acquired a credit-card business; that in your opinion this type of business activity is not an extension of credit that banks should engage in; that the credit-card business is operated by soliciting anybody and everybody who will pay an annual membership fee of \$5 for joining the "club," as a result of which and without checking credit, they have a right to obtain credit wherever they go for entertainment purposes, dining purposes, and all kinds of purchases of goods; that the merchant has no hesitancy in extending the credit because the credit is guaranteed by the credit-card company for which a charge from anywhere from 6 to 8 percent is made to the merchant by the credit-card company, and that the charge to the merchant by the credit-card company is in the nature of a premium for an insurance or a guarantee contract. You are of the opinion that credit should be extended by a bank only after proper investigation and determination that the individual or company seeking the credit is entitled to it and that this is never done in connection with the credit-card business.

The legal principles governing an extension of credit controlled by the use of a validated identification card are the same as those pursuant to which credit has historically been extended through travelers' letters of credit, revolving consumer credit plans, and other similar devices currently used by commercial banking institutions. The essence of the validated identification or credit card business is to permit a subscriber to charge purchases of goods and services at participating vendors. The person to whom credit is thus extended is required to pay such charges to the issuer of the card on the terms specified in his agreement with the issuer. Before a credit card is approved the issuer determines the credit worthiness of the subscriber and his ability to meet obligations arising through the use of the card. The participating vendors of goods and services also enter into agreements with the issuer. The vendor agrees to promptly assign to the issuer the charges, providing evidence thereof, and the issuer agrees to promptly pay the vendor for such charges at an agreed upon discount. The purchase of such charges by the issuer is, in principle, the same as many forms of commercial finance now conducted by commercial banks. The acquisition by the First National City Bank of New York of a credit-card business is not unique in the commercial banking industry. Other banks, both State and National, in a number of States, are also engaged in this financing activity.

Sincerely,

JAMES J. SAXON,
Comptroller of the Currency.

OCTOBER 25, 1965.

HON. JAMES J. SAXON,
*Comptroller of the Currency,
Administrator of National Banks,
Washington, D.C.*

DEAR JIM: I have yours of October 14 in reply to mine of September 26, with reference to the credit-card business as conducted by banks.

I am afraid that you have missed my point. I am not trying to argue as to whether or not banks, State or National, should be authorized to carry on this business. I am concerning myself with whether or not they have any legal authority to carry on such business, regardless of the fact that some of them have been doing it for a greater or a lesser period of time.

If you are right, that the legal principles governing an extension of credit controlled by the use of credit cards is the same as those historically extended through letters of credit, then you prove my point. Letters of credit are always issued either against good collateral or because of a credit investigation which proves that the holder of the letter of credit is entitled to the credit. But, more important than that, every letter of credit has a definite limitation as to the maximum amount of credit extended. There is no such limitation in the credit-card business.

Similarly, revolving consumer credit plans have a definite limitation as to amount and are never extended except after a full and complete investigation and a determination that the person to whom the credit is being extended is entitled to that credit up to a maximum amount. You further emphasize the point I make, when you say that the essence of the credit-card business is to permit a subscriber to charge purchases of goods and services. The trouble with that is that there is no limitation on the amount of such credit that may be extended, plus the fact, I reiterate, that there is no investigation made of the credit responsibility of the subscriber.

Assuming, however, that there is a credit investigation of the subscriber, it is made not by the bank extending the credit, but by the association or organization that is doing it. No bank has a right to delegate credit investigations to others than the lending officers of the banking institution. You also make the point for me, and against yourself, when you say that the purchase of accounts from vendors who are extending the credit to the subscribers is the same as many forms of commercial finance now conducted by commercial banks. If it were the same, there would be less argument. But it is not the same.

No bank would stay in business very long which would buy customers' accounts without an appropriate agreement with the vendor as to the nature of the accounts, the extension of the credit, the terms, the amounts and also a warranty of the credit responsibility of the customers. Every bank, every finance company, and every factoring company that buys customers' accounts enters into extensive agreements covering the matter of extension of credit and all of the various elements that enter into it, with very specific limitations as to what kind of accounts will be bought and the credit responsibility of the customers whose accounts will be acquired.

None of this takes place in the credit-card business.

I repeat, the credit-card business is actually an insurance or guarantee program in which the credit-card company guarantees to its customers the credit of the subscribers. The extension of credit is made by the vendor who, for a fee, has the account guaranteed to it by the credit-card company. The credit-card company or association is not extending credit; it is guaranteeing the credit. And the bank that acquires such credit-card business is also entering into the insurance or surety business and not in the business of extending credit.

It may very well be that we ought to permit banks to do this business, although I doubt it. But until the law is changed and they are permitted to enter into this kind of an insurance or surety business, neither you nor any other banking authority should permit the banks to engage in it.

With warm regards, I am,
Sincerely,

ABRAHAM J. MULTER.

TREASURY DEPARTMENT,
COMPTROLLER OF THE CURRENCY,
Washington, D.C., December 30, 1965.

HON. ABRAHAM J. MULTER,
U.S. House of Representatives,
Washington, D.C.

DEAR ABE: This is in reply to your letter of October 25, 1965, which, as did your letter of September 26, 1965, related to the credit card business as conducted by national banks. In both of your letters you assert that the credit card business does not involve the extension of credit in which banks should engage; that the credit card business is the insurance or surety business; and that, therefore, you are concerning yourself with whether or not national banks have the legal authority to engage in the credit card business irrespective of their having done so for a period of time.

A national bank is legally authorized by paragraph 7 of 12 U.S.C. 24 to carry on the business of banking. A bank's purchase of charges incurred in connection with the purchase of goods and services from the vendor of such goods and services, whether in connection with credit cards issued by the bank, or otherwise, has for decades been regarded as a financial transaction and accepted as a part of the business of banking. As was stated by the Supreme Court of the United States in *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963) at page 326, "banking operations are varied and complex; 'commercial banking' describes a congeries of services and credit devices." The Supreme Court further stated on page 326 that "the principal banking 'products' are of course various types of credit, for example: unsecured personal and business loans, mortgage loans, loans secured by securities or accounts receivable, automobile installment and consumer goods installment loans, tuition financing, bank credit cards, revolving credit funds."

With respect to the contention that there is no limitation as to the maximum of credit in the credit card business, it must be stated that, as in the case of other extensions of credit, the provisions of 12 U.S.C. 84 are clearly applicable. To the extent that, in connection with a credit card business, charges and accounts are purchased by a bank under an agreement by the vendor to repurchase them upon default, the vendor's obligation to repurchase is subject to the bank's lending limit and is measured by the total unpaid balance of the paper owned by the bank, less the applicable vendor's reserves against defaulted paper, if any. Where the vendor's obligation to repurchase is limited, it is measured by the total amount of paper the vendor may ultimately be obligated to repurchase. Similarly, the provisions of 12 U.S.C. 84 are clearly applicable to the credit card holder and the obligations incurred by him in the purchase of goods and services from the merchants and business enterprises from which the banks has purchased his charges and accounts. Such obligations would, consistent with the requirements of 12 U.S.C. 84, have to be combined with any other obligations which the credit card holders may have with the bank.

With regard to the contention that there is no investigation of the credit responsibility of the credit card holder, or, if there is such an investigation, that it is not made by the bank extending the credit, any bank doing a credit card business will and should make a full and complete determination as to the credit responsibility of both the credit card holder and of the vendor from whom the bank purchases accounts receivable, including loss-ratio studies. However, a bank is clearly warranted in availing itself of the use of outside professional credit investigatory services in making its determination of credit responsibility.

It is contended that banks which purchase customer's accounts from a vendor do not have agreements with the vendor as to the nature of the accounts, extension of credit, terms, amounts, and warranty of the credit responsibility of the customer. Such agreements are entered into in the case of national banks doing a credit card business. Participating vendors of goods and services enter into agreements with the credit card issuer to buy and sell such accounts, and by the terms of such agreements the nature of the accounts, their terms, and amounts would ordinarily be set forth. It would seem totally unnecessary to require that the vendor warrant the credit responsibility of the customers whose accounts are being purchased by the bank, inasmuch as the bank itself has al-

ready appraised and approved of the credit responsibility of the credit card holders as a result of its credit determination prior to issuing its card and as a result of its experience with the individual after the card is issued.

Sincerely,

JAMES J. SAXON,
Comptroller of the Currency.

* * *

FEBRUARY 2, 1966.

HON. JAMES J. SAXON,
Comptroller of the Currency,
Washington, D.C.

DEAR JIM: This is in reply to your December 30 letter in response to my October 25, 1965, letter, regarding bank participation in the credit card business. You state that the purchase by a bank of a vendor's charge for goods or services to a credit card holder is a financial transaction that is part of the banking business. You cite the opinion of the Supreme Court of the United States in the case of *United States v. Philadelphia National Bank*, 374 U.S. 321 in support of this position. You also state that the extension of bank credit to a vendor and credit card holder is subject to the provisions of 12 U.S.C. 84, that a bank should make a full and complete determination of a vendor's and cardholder's credit responsibility and that banks doing a credit card business enter into agreements with participating vendors for purchase of their charges to cardholders.

Your contention that a bank's purchase of vendor's charges for goods or services in connection with credit cards issued by the banks has for decades been regarded as a financial transaction and accepted as part of the business of banking is not supported by the record. You will find that the extension of credit by a vendor to a bank-issued-credit-card holder is of recent vintage and consequently the purchase of such charges can also only be of recent vintage. The issue is not the purchase by a bank of vendors' charges but rather bank participation in creating these charges. The blanket extension of credit to a cardholder in advance of need, good only for use with a participating or bank-approved vendor is a departure from the business of banking. Such direct participation by a bank in creating a charge which it will eventually purchase should not now be nor was it ever the banking business. For this service the bank imposes a charge both on vendor and vendee. The vendee pays an annual service charge for his credit card while the vendor pays a discount charge on the face amount of the charges purchased by the bank. I have grave doubts regarding the practice of imposing a charge on both sides to a credit transaction by the bank. I cannot believe that imposition of such charges on both vendor and vendee constitutes the banking business.

You cite the opinion of the Supreme Court of the United States in the case of *United States v. Philadelphia National Bank* in support of the position that banks are authorized to engage in the credit card business. The Supreme Court did not so decide in that case nor in any other one. That case involved a suit by the United States to enjoin consummation of a proposed consolidation between two Philadelphia metropolitan banks on the ground that such consolidation would be in violation of section 7 of the Clayton Act. The Court was called upon to make an economic determination whether the effect of the merger "may be substantially to lessen competition, in any line of commerce in any section of the country." To do this the Court considered the "line of commerce" (relevant product or services market) which might be affected by the proposed consolidation in order to appraise its probable effects. The Court concluded "that the cluster of products (various kinds of credit) and services (such as checking accounts or trust administration) denoted by the term 'commercial banking' * * * composes a distinct line of commerce." In a footnote the Court described these various types of credit, among other things, to include bank credit cards. This was not a finding that the issuance of bank credit cards comes within the legal powers of national banks. Rather it described the economic facts of the marketplace as the Court found them. This is to be distinguished from a determination that it is legal for a bank to engage in the credit card business. All the Court said was that the bank credit card is a type of credit in use in the marketplace. It neither passed on the legality of this device nor considered the question. To cite this opinion as support for bank authority to engage in the credit card business misleads.

You recognize that the extension of credit by a bank to a credit card holder and to a participating vendor is subject to the limitation of 12 U.S.C. 84. You then go on to describe the manner of computing the amount of credit extended

in the case of a vendor obligated to repurchase defaulted charges in whole or in part from the bank. As I understand the credit card business the issuance of a credit card entitles the holder to purchase products and services from participating vendors on credit. As a corollary the participating vendor is obligated to honor the card by extending credit to the holder upon request. The vendor has no discretion in the matter for by the terms of his agreement with the bank-issuer he is required to extend credit to the holder upon presentation of the credit card and the bank, in turn, is required to purchase the charge so incurred at a predetermined rate or discount. I am, therefore, at a loss to understand why you find it necessary to describe how the amount of credit extended by a bank to a vendor is computed in the case where the vendor is obligated to repurchase defaulted charges in whole or in part. This situation is not germane. If the bank has recourse against the vendor for defaulted charges then the vendor has the right in the first instance to determine to whom he will extend credit. Conceivably, he could refuse to extend credit to a credit card holder if he believes that the holder is a poor credit risk. If the ultimate risk is with the vendor under a full or partial recourse agreement he would be justified in doing this. Obviously this is not the way the credit card business works. For a vendor to refuse to extend credit to a cardholder would violate his agreement with the bank and the bank's agreement with its cardholder.

In the case of an outright purchase of accounts receivable by a bank without recourse against the vendor, as I view it, no extension of credit to the vendor is involved. While it is true that a bank may and in most instances does limit the amount of such accounts that it will purchase, this does not involve credit extension to the vendor. The credit has been extended to the vendee who then becomes indebted to the bank. In the credit card business the bank purchases charges incurred by its cardholders, which is exactly what it has agreed to do. The credit recipient is the vendee not the vendor. Conceivably, a bank might extend credit to a cardholder through purchases of charges incurred by him and by direct loan to him in excess of the limitation permitted by 12 U.S.C. 84. I know of no way that a bank could guard against this in the face of its obligation to purchase from participating vendors all such charges incurred by cardholders. The bank has no way of knowing in advance how much credit the cardholder will call on it to advance. The fact is that by its very nature the credit card business commits a bank to extend its credit without regard to the limitations imposed by 12 U.S.C. 84.

You say that a bank doing a credit card business will and should make a full and complete determination of the credit responsibility of both the credit card holder and the vendor from whom the bank purchases charges incurred by the holder. While I can understand that the bank would want to do business with an honest and reliable participating vendor, I am at loss to understand why it should concern itself with his credit responsibility. It extends no credit to the vendor and under its agreement their relationship is that of vendor and vendee.

While a bank can avail itself of outside professional credit investigatory services in determining credit responsibility of a cardholder it can not relieve itself of the decisionmaking responsibility in this area. In view of the large number of cardholders which may be involved and the rapidity of possible changes in their credit status, I am afraid that this whole area of credit responsibility, including decisionmaking, will be not only consigned to outside sources but completely ignored by the bank.

You also say that a bank which purchases cardholder charges from a vendor does so under a covering agreement. Have you examined these agreements? What are their terms? Have you examined the agreements with the cardholders? What are their terms? Did you ever see one that has a limitation on the amount of debt the cardholder may incur? Even if it were there, how can the limitation be enforced? To lump the purchase of cardholders charges with the purchase of other charges is to beg the issue and beg the question.

In closing I would like to make this additional comment. While we have been discussing this matter as if the bank itself were engaged in the credit card business the practice is for banks to engage in this activity through bank ownership of stock in a corporation engaged in this business. I am familiar with your ruling that a national bank may own corporate stock, including a controlling interest, providing this ownership is "for purposes properly incident to its banking business." Under this ruling national banks are acquiring stock in corporations engaged in the credit card business. In addition to the other reasons I have described why a bank should not engage in this business, the error is further compounded when it acquires stock in a corporation engaged in the

business for this purpose. I do believe that no national bank may acquire stock in any such corporation. If you stretch the law that far why not say that a bank may purchase the stock of a mortgage brokerage corporation or that of a car rental company?

With warm regards, I am,
Sincerely yours,

ABRAHAM J. MULTER.

FEBRUARY 9, 1966.

Hon. JAMES J. SAXON,
Comptroller of the Currency,
Treasury Department,
Washington, D.C.

DEAR JIM: The enclosed clipping from the Wall Street Journal makes interesting reading.

Do you seriously believe for 1 minute that this bank will make or has made any credit check on any of the 400,000 customers to whom cards will be issued, as indicated in the item?

Do you seriously believe for 1 minute that the 9,000 merchants whom the bank hopes to enroll in this plan will have any interest in the credit responsibility of its customers? Don't you believe that the sole desire of these merchants will be to sell the customer and then look to the bank for payment?

Have your examiners made any inquiry to determine what credit checks, if any, have been made to determine whether or not each of the customers of this bank has a right to go in and just for the asking obtain a loan of up to \$350?

Note particularly the last paragraph of the item. Do you really believe that any bank has a right to lend money for even 1 day without charging interest? If they can lend money up to 25 days without interest, why can't they lend it for 25 years without interest?

I await your reactions with interest.

With warm personal regards, I am,
Cordially,

ABRAHAM J. MULTER.

[From the Wall Street Journal, Feb. 8, 1966].

SEATTLE-FIRST NATIONAL TO OFFER A CREDIT CARD

(By a Wall Street Journal staff reporter)

SAN FRANCISCO.—Seattle-First National Bank, Washington State's largest, said it will start operating a credit card business around June 1.

An increasing number of large banks around the country have moved into the credit card business recently.

Seattle-First National said it plans to mail about 300,000 cards to customers by June 1. In addition, the bank expects to accept credit card applications from as many as 100,000 other Washington residents, a spokesman said. The bank hopes to enroll about 9,000 merchants in the credit card plan by June 1.

Besides enabling holders to charge purchases from participating merchants, the Seattle-First card can be used to pay doctor and dentist bills and obtain cash advances of up to \$350 at any one of the bank's branches, the bank said.

Merchants taking part in the plan will be reimbursed by the bank for the amount of charges they accept on the credit cards less a small discount. A spokesman said the discount, which hasn't yet been disclosed, would probably vary with the volume of charges at any store.

Interest, expected to be 1 percent a month, will be levied cardholders on their monthly unpaid charge balance, except that those who pay for purchases within 25 days of billing won't be charged interest, the bank said.

ALBANY, N.Y., March 9, 1966.

Hon. RICHARD L. OTTINGER,
House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE OTTINGER: This letter is written to you for the specific purpose of soliciting your support for the approval of bill H.R. 10529 introduced by Representative Abraham Multer, of New York.

This bill in essence would prohibit banks from performing technical professional accounting, auditing, and tax services to the general public. I feel very strongly that legislation of this type is needed soon, if banks are to be restrained from entering into direct competition with independent accountants (CPA's and PA's).

In addition to the several pertinent statements defining the exact nature of the performance of professional accountancy and its relationship to the client as contained in the Congressional Record dated Thursday, August 19, 1965, I would like to present a few of my own misgivings concerning banks being given the privilege of performing professional accounting services.

(1) In my own experience with banks, I believe it fair to state that they do not in general have the qualified personnel necessary to offer such services to the public, nor do they, at least in my community, appear to be in position to attract such personnel. In fact, the majority of bank employees who occupy so-called executive positions are unable to make technical and objective interpretations of financial statements without the assistance of the independent public accountant.

(2) The performance of professional accountancy is my livelihood and to qualify for rendering such services required the obtaining of a college degree, 3 years in practical training with a CPA firm, and formal approval by the State of New York CPA Board of my credentials which allows me to practice as an enrolled public accountant in that State. It therefore does not seem appropriate that banks, who seem to have a flair for infringing on the services rendered by the professions should be allowed to enter the field of public accountancy. Who is going to determine when a bank qualifies to perform professional accounting services or with all the necessary forces at their command, will such approval only be a formality?

(3) Also, it is my belief that if allowed to practice public accountancy, the banks will be in a position where certain conditions exist of referring clients to a few selected accounting firms (mostly large) and thereby depriving the individual practitioner and the smaller accounting firms less opportunity of obtaining new business. This could happen and if you don't believe it, just examine the legal papers prepared by the bank's attorneys in connection with a mortgage loan. If the bank can stipulate where a borrower can or cannot deposit his money, it could very well dictate what accounting firm would perform the audit, although granted it would be done in a most subtle manner.

(4) Banks have a definite place in the business community. However, the enlargement or expansion of their services must not be allowed to encroach into the professional fields. I am afraid that if banks are allowed in particular to practice public accountancy, the accounting profession will lose its identity with the general public, the technical aspects of the profession will be greatly minimized, and the reliability of financial statements will all but vanish.

In conclusion, therefore, I urge you to give your full support to this legislation which I might suggest must have "teeth" in it to be effective. There can be no compromise legislation on this issue.

If you are doubtful of the arguments presented in favor of this legislation as contained in the bill itself or by my own preceding statements, will you kindly talk to practicing accountants. This might enable you to better understand the complete nature of the accounting profession, its achievements, aims, and responsibilities.

Your consideration in this matter will be sincerely appreciated.

Very truly yours,

JOHN E. KINISKY, *Public Accountant.*

BADEN, PA., March 15, 1966.

Re H.R. 10529, prohibiting banks from performing accounting services.

Hon. WRIGHT PATMAN,
Chairman, Banking and Currency Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN PATMAN: Today, accounting services, tomorrow, what?

I am writing to you to express my position on the above bill. I believe that the House Banking and Currency Committee should hold hearings on the bill, and receive testimony thereon from witnesses for the National Society of Public Accountants and then report it out of the committee for congressional action.

The fierce competition that exists among the banking institutions has become apparent to all. Are people being facetious when they state that banks are doing everything to entice clients with the possible exception of giving away green stamps? Competition is healthy when it is confined to lines that complement the purpose of banking. However, competition is harmful if it entices clients into the bank by the use of unrelated services.

Is anyone being aided by the fact that some banks will offer accounting and tax services whether for a nominal charge or for free? No. This is not to the best interest of the individual clients, business firms, the public accounting profession, or the banks themselves because the actual costs of these services must be absorbed somewhere. Thus, they are absorbed and felt in higher interest rates on loans, lower payment of interest on deposits, fees for the use of checking accounts, fees for cashing checks, etc. Moreover, the time and energy of the banking personnel is being diffused and improperly utilized by the operation of these unrelated services. If the banks wish to compete, why not compete toward the elimination of some of the costs that are now placed upon their client, which I have already mentioned, or making and servicing marginal loans instead of driving these persons to small loan companies, etc. If the banks do offer accounting and tax services on a profitable basis to themselves, then will the practice arise that loan applications will favorably be acted on only if the customer utilizes such services? Will this practice rise to the existing one of favorably passing upon a loan if the client brings in his account to the bank?

The very nature of accounting services and tax analysis and advice require not only the confidential relationship between the accountant and his client, but the constant continuing education of the accountant. It is not likely that the personnel of the bank who will be doing the accounting and tax work will either achieve or maintain the required skill and education because—

(a) While the professional accountant must depend upon such skill and education to continue a fulltime practice for his livelihood, the bank personnel have assured income regardless of the quality of their work.

(b) If there is a failure of professional skill and education in his accountant, the client will seek another accountant while the client of the bank may be reluctant to change if the bank has the client's loan particularly if it is delinquent. In fact, he may even be reluctant to protest against the haphazard work itself.

(c) A professional accountant being subject to professional ethics, conduct, and sanctions can only acquire his practice through competency in his work, while a bank need not conform to such standards because it can depend on advertising and even direct solicitation for acquiring its accounting business.

Thus, for the foregoing reasons, I urge upon you to hold the committee hearing on H.R. bill 10529 and permit witnesses for the thousands of persons the National Society of Public Accountants, who represent thousands of persons to testify on behalf of this bill. If this is done, then its passage will enure priceless benefits to individual clients, business firms, professional accountants, and even to the banks. Yes, its passage will protect the banks from themselves. Today they are performing accounting services, tomorrow will they be performing legal services, insurance services, etc.?

Respectfully yours,

PENNSYLVANIA ASSOCIATION OF
ENROLLED FEDERAL TAX ACCOUNTANTS,
MARK S. HARAM, *President*.

NEW YORK CLEARING HOUSE,
New York, N.Y., March 17, 1966.

Re H.R. 112.

HON. WRIGHT PATMAN,
House of Representatives, Washington, D.C.

DEAR MR. PATMAN: The New York Clearing House Association opposes the above bill.

If enacted, the bill would unnecessarily interfere with normal banking relationships and functions.

In permitting banks to render the services enumerated only when "a necessary incident" to the proper discharge of lawful functions of such bank "as a deposi-

tory, lender, trustee, or agent," the bill makes unlawful the rendering of services which may be "a necessary incident" to other "lawful functions" of the bank or which are not perhaps "a necessary incident" to but are certainly incidental to the lawful functions of the bank.

A bank has many "lawful functions" as a bank in addition to those as "a depository, lender, trustee, or agent."

In practice, the bill will be unworkable because of the difficulty of drawing the line between those services which are "a necessary incident to the proper discharge of lawful functions of such bank * * *" and those which are merely "incident" to such functions.

Some of the areas where major difficulties would arise include:

(a) The bill would deprive many smaller banks and businesses of the benefits of high-speed equipment available to the larger banks. Recently, banks with correspondent relationships have been able to give their correspondent banks the benefit of the high-speed equipment that the larger banks can afford but which the smaller banks would find prohibitively expensive. The use of this equipment by a larger bank for a smaller correspondent assists the correspondent in its competitive cost problems and provides it with statistical and accounting information which it might not otherwise have or would not otherwise have nearly as promptly. These services rendered on high-speed equipment help the smaller bank because of increased accuracy, more prompt analyses of accounts, prompt information as to significant changes in accounts, prompt check on possible guiding operations, and in various other respects.

These services now being rendered to smaller correspondent banks are incident to the normal and lawful functions of the bank and give the smaller correspondent bank all the benefits of such equipment but if it is held that they are not "a necessary incident," this bill would deprive these banks of the benefits of modern computer technology at a time when their larger competitors would have the benefits of such technology.

(b) Banks have long acted as custodians of securities for their customers and have long rendered investment advisory services to them. Certain related clerical services are "a necessary incident" to such functions, but since such functions may be held not to be rendered by the bank as a "depository, lender, trustee, or agent," they may become unlawful. For example, the bank might be prevented from furnishing related clerical services to customers which take advantage of its investment advisory services and therefore the bank might be unable to give them pertinent tax information and other accounting information.

(c) Other services where there could well be difficulty in drawing this line between "a necessary incident" and "incident" include:

The furnishing of tax information to trust beneficiaries;

Many of the normal and usual accounting functions in connection with the settlement of trusts and estates; and

Assistance in the reconciliation of accounts.

These and many other services are incident to normal and lawful banking functions and have long been rendered by banks. Where and how is the line to be drawn?

This bill would create hopelessly complex problems of interpretation. It would interfere with normal banking relationships. It would arrest the orderly evolution of commercial banking. It should not become law.

Yours very truly,

GEORGE CHAMPION, *President.*

NEW YORK CLEARING HOUSE,
New York, N.Y., March 17, 1966.

Re H.R. 117.

HON. WRIGHT PATMAN,
House of Representatives,
Washington, D.C.

DEAR MR. PATMAN: The New York Clearing House Association is writing you in opposition to the above bill which would forbid any bank, as described in the bill, from being the lessor of personal property under any circumstances or by any means as a result of which such bank performs or is compensated for any services other than the lending of money or the advancement of credit with respect to such property or acquires or may acquire any interest in such property

other than as security for the repayment to such bank of money or credit advanced by it together with interest and other charges.

National banking associations and a number of State banks have been engaged in the business of direct leasing of chattels for some time. Other banks, where there are impediments under State law, have been indirectly engaged in such business through the use of dummy corporations. This business is a normal banking function closely analogous to the lending of money and enables businessmen, small as well as large, to acquire equipment necessary in their business on a more reasonable basis than might otherwise be the case. To require banks to vacate this financing field may well increase for many businessmen the cost of equipping their plants, factories, and other operations to the detriment of the national economy.

This bill should not be passed.

Yours very truly,

GEORGE CHAMPION, *President.*

NEW YORK CLEARING HOUSE,
New York, N.Y., March 17, 1966.

Re H.R. 10529.

Hon. WRIGHT PATMAN,
House of Representatives,
Washington, D.C.

DEAR MR. PATMAN: The New York Clearing House Association opposes the above bill.

If enacted, the bill would unnecessarily interfere with normal banking relationships and functions.

In permitting banks to render the services enumerated only when "a necessary incident" to the proper discharge of lawful functions of such bank "as a trustee or agent," the bill makes unlawful the rendering of services which may be "a necessary incident" to other "lawful functions" of the bank or which are not perhaps "a necessary incident" to but are certainly incidental to the lawful functions of the bank.

A bank has many "lawful functions" as a bank in addition to those as "a trustee or agent." In fact, the most important functions of a bank are those in which it acts as a depository or as a lender.

In practice, the bill will be unworkable because of the difficulty of drawing the line between those services which are "a necessary incident to the proper discharge of lawful functions of such bank * * *" and those which are merely "incident" to such functions.

Some of the areas where major difficulties would arise include:

(a) The provisions of section 2(3) of the bill which define as "professional accounting services" the preparation of financial statements from books of account might deprive many smaller banks and businesses of the benefits of high-speed equipment available to the larger banks if data processing is held to come within this definition. Recently, banks with correspondent relationships have been able to give their correspondent banks the benefit of the high-speed equipment that the larger banks can afford but which the smaller banks would find prohibitively expensive. The use of this equipment by a larger bank for a smaller correspondent assists the correspondent in its competitive cost problems and provides it with statistical and accounting information which it might not otherwise have or would not otherwise have nearly as promptly. These services rendered on high-speed equipment help the smaller bank because of increased accuracy, more prompt analyses of accounts, prompt information as to significant changes in accounts, prompt check on possible guiding operations, and in various other respects.

These services now being rendered to smaller correspondent banks are incident to the normal and lawful functions of the bank and give the smaller correspondent bank all the benefits of such equipment as an incident to its functions as a depository. This bill would deprive these banks of the benefits of modern computer technology at a time when their larger competitors would have the benefits of such technology.

(b) As a necessary incident to their services as lenders, banks to which their customers have assigned receivables as security for loans frequently process the proceeds of collections of the assigned accounts and furnish statements of ac-

counts to their customers. This gives the banks protection in the control of their security and is of great assistance to the customer, particularly to the smaller customer that cannot afford expensive data processing equipment.

(c) As a necessary incident to their functions as depositary, banks render services to their customers in the reconciliation of accounts. If this is to be forbidden under section 2(3), the smaller customers will again be the victims.

(d) It is not clear how far "the preparation of income tax returns" (sec. 2(4)) is to be interpreted and whether it is to be interpreted as including the furnishing of tax information to their investment advisory customers and trust beneficiaries. This bill would interfere with these long-established relationships.

(e) Many of the normal and usual accounting functions in connection with the settlement of trusts and estates might come within the prohibitions of section 2(3).

The bill would create hopelessly complex problems of interpretation. It would interfere with normal banking relationships. It would arrest the orderly evolution of commercial banking. It should not become law.

Yours very truly,

GEORGE CHAMPION, *President.*

NEW YORK CLEARING HOUSE,
New York, N.Y., March 17, 1966.

Re H.R. 11053.

HON. WRIGHT PATMAN,
House of Representatives,
Washington, D.C.

DEAR MR. PATMAN: The New York Clearing House Association is writing you in opposition to the above bill which would forbid any bank, as described in the bill, from being the lessor of personal property under any circumstances or by any means as a result of which such bank performs or is compensated for any services other than the lending of money or the advancement of credit with respect to such property or acquires or may acquire any interest in such property other than as security for the repayment to such bank of money or credit advanced by it together with interest and other charges.

National banking associations and a number of State banks have been engaged in the business of direct leasing of chattels for some time. Other banks, where there are impediments under State law, have been indirectly engaged in such business through the use of dummy corporations. This business is a normal banking function closely analogous to the lending of money and enables businessmen, small as well as large, to acquire equipment necessary in their business on a more reasonable basis than might otherwise be the case. To require banks to vacate this financing field may well increase for many businessmen the cost of equipping their plants, factories and other operations to the detriment of the national economy.

This bill should not be passed.

Yours very truly,

GEORGE CHAMPION, *President.*

NATIONAL ASSOCIATION OF SUPERVISORS OF STATE BANKS,
Madison, Wis., March 21, 1966.

Re H.R. 112, 117, and 10529.

HON. ABRAHAM J. MULTER,
Chairman, Subcommittee on Bank Supervision and Insurance, Committee on Banking and Currency, House of Representatives, Washington, D.C.

DEAR MR. MULTER: The National Association of Supervisors of State Banks appreciates your invitation of March 4, 1966, to comment upon the above-captioned bills.

Upon receipt of your letter, we conducted a survey of the several State bank supervisors regarding the three bills. As we expected, some of the State bank supervisors favored the proposed legislation; others were opposed. In each case, of course, the reaction of the individual supervisor was based upon the situation as it exists in his particular State.

On the other hand this survey, and direct contacts with State bank supervisors in the past regarding similar legislative proposals, makes one point very clear. All of the State bank supervisors agree that the question of whether

these powers should be granted to State-chartered banks is one for the States to decide. They oppose any Federal legislation which would interfere with the powers granted to, or powers withheld from, State-chartered banks by either a State statute or a State bank chartering authority.

Consequently, the position of NASSB on these bills can be described as follows:

We have no objection if the Congress considers the three bills solely in relation to national banks, but we oppose any attempt by Congress to legislate with regard to these powers as they relate to State-chartered banks.

We appreciate your consideration in keeping the record open so that our position may be included therein.

Respectfully submitted,

WILLIAM E. NUESSE, *President,*
National Association of Supervisors of State Banks,
Commissioner of Banks, State of Wisconsin.

NORTH AMERICAN CREDIT SERVICE, INC.,
Kansas City, Mo., March 21, 1966.

Congressman WRIGHT PATMAN,
Chairman, House Committee on Banking and Currency,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN: It was with a great deal of interest that I read the enclosed article from the Thursday, March 17 issue of the Kansas City Times, especially the last paragraph.

I am enclosing the article for your review and information.

Not only is legislation needed to restrict large holding companies from controlling banks, but legislation is also needed restricting banks from getting into nonbanking business; that is, complete accounting services.

It is basically wrong to pass laws to restrict private business from entering banking functions to better their own positions and then turn around and allow banks to enter private business functions to better their positions. This is a monopoly to the highest degree in that it is created and protected by the Government—the same Government that professes to the masses the need of small business in a democracy and then turns around and destroys the very thing they say must exist and needs protecting for our way of life.

A prime example of pressures that some banks are putting on private business recently happened to our company.

We are a small accounts receivable and accounting service engaged in all phases of accounting services. During the past 3½ years we have satisfactorily serviced a million dollar accounts receivable for a local firm selling to individuals in several cities with so much down and so much per month. We receive, process their accounts receivable, deposit all moneys to a trust and give a complete monthly report on sales, collections, beginning and ending balances, and an individual payroll is computed and accumulated for salesmen's earnings.

The bank that holds the trust has implied and put pressure to bear on our client that according to their interpretation of the law the bank must do their accounts receivable, payroll, et cetera, in order to maintain this trust fund—which is an accounting procedure that has nothing to do with the banking business.

As an added attraction for our client, the bank has promised to finance new operations in various cities throughout the State.

It is our opinion that this bank and other banks are getting a foothold into private business in this manner which is accelerated by the knowledge that to substantiate the cost of data-processing equipment additional functions must be added to its program.

We can compete with private business, small or large; but the Government-backed high prestige of banks cannot be surmounted at this time. When the public becomes aware that banks are in private risk businesses, then their "high loftiness" and "prestige" needed for the confidence of the general public will not be there.

Legislation certainly is needed to restrict banks from getting into private business and bringing pressure to their depositors in the manner which I have outlined in this letter.

Since the Government keeps a close watch on large corporations to restrict them from practicing monopolistic operations, it would seem that such legislation should be in order to require banks to perform banking functions "only" and to divest themselves of nonbanking functions.

The above story is a small "cry" from a "company that was."

Sincerely,

JOHN T. SCHOTT,
Secretary-Treasurer.

[From the Kansas City Times, Mar. 17, 1966]

ASKS CLAMP ON FISCAL ESCAPE—HEAD OF FEDERAL RESERVE BOARD HEARD BY COMMITTEE—AIMS AT SOME BANKS

MARTIN ALSO SAYS HOLDING COMPANIES EXEMPT FROM REINS

WASHINGTON.—William McChesney Martin urged Senators yesterday to close legal loopholes which exempt some banks and bank holding companies from controls by the Federal Reserve Board he heads.

Senator A. Willis Robertson, Democrat, of Virginia, chairman of the Senate Banking Committee, indicated some bill to do this would be approved after careful study of legislative proposals.

WOULD BE AFFECTED

Martin and other witnesses before the committee testified that the proposed legislation would apply principally to: (1) The multimillion-dollar Alfred I. du Pont estate with its vast holdings in Florida and elsewhere; (2) the powerful Financial General Corp. of Washington and Delaware, which controls a network of banks, insurance, and other interests.

Both of these groups were granted exemptions from the Bank Holding Company Act of 1956 and subsequent revisions of it.

Martin said the chief aims of the 1956 act were "to prevent undue concentration of control over banks in the hands of any holding company" and "to prevent any holding company from controlling both banks and nonbanking businesses."

But he added that "for every holding company now registered under this act, there are 10 or more that are exempt," chiefly because the act is limited to companies holding more than one bank.

ABUSES COULD ARISE

Some abuses which might result from holding operations, Martin said, are: Denying credits to competitors of a bank's subsidiaries; requiring builders to buy from suppliers controlled by a bank; or limiting automobile financing to dealerships or credit firms linked to the bank.

He said Congress had decided that banks should divest themselves of nonbanking interests and this should be applied generally.

ASSOCIATION OF BANK TRAVEL BUREAUS,
Indianapolis, Ind., March 29, 1966.

HON. ABRAHAM J. MULTER,
*Chairman, Subcommittee on Bank Supervision and Insurance,
House Banking and Currency Committee,
House of Representatives, Washington, D.C.*

DEAR MR. MULTER: It is with the utmost importance that I, as president of this association, write to you and members of your committee concerning House bill H.R. 117, on which hearings are now being held.

The purpose of this communication is to fully discuss why we believe banks have a rightful place within the travel agency industry. We ask that these written words be made a part of the records of these hearings.

I read in the press and in the banking and travel trade papers that on Tuesday, March 15, 1966, Mr. Raymond H. Hering, vice president, industry relations, American Society of Travel Agents, Inc. (ASTA), appeared before your committee, and gave testimony for the enactment of legislation which would prohibit

national banks from engaging on a commercial basis in the travel agency business. I have read Mr. Hering's statement of testimony, and I am sure that although Mr. Hering stressed the enactment of legislation against national banks, that it is the full intention of ASTA to also include State banks as well.

Before proceeding with my discussion relative to banks in the travel business, and why this association feels banks have a rightful place to operate within the travel agency industry, I think it important to all concerned to first get a brief early history of the industry.

A bank owned and operated travel facility is not new to banking. There are many banks in our country that have had travel facilities for many, many years. The history of the travel industry will indicate that banks were predominant back in the late 1800's. Whether or not banks were in the travel agency business before the independent travel agent, I do not know, however, from information I can gather, it is said that there were more banks serving as travel agents before the turn of the century than there were independent travel agents. Travel, as a bank service, can be traced back to 1865. The Merchants National Bank, Indianapolis, Ind., reports that their travel facility was established in that year. There are few existing independent travel agents that can boast of such an early date. When banks first went into travel, the concentration was with banks in the Midwest. This was due to the immigrant situation which created quite a competitive market among banks. Individual banks at the time were serving the banking needs of immigrants who had come to this country from many foreign lands. These immigrants, after arriving in America, worked hard to accumulate funds so that they could bring their families and friends to this country. At the appropriate time, they would come to the bank to withdraw funds from their account, and then find themselves forced to purchase steamship passages for their families and friends through unsupervised agents who often would charge them excessive fees. Because of this situation, the immigrants would complain to their bank. Knowing that such a situation did exist, with immigrant having no other place to turn for his assistance in travel, the banks took it upon themselves to assist the immigrant in his steamship passage needs. Soon the banks found that people relied upon them for their steamship passage needs, and that they, the banks, were running a regular travel agency, so to speak, but were not getting paid for the work involved. It was not long before banks applied for and received steamship passenger appointments, thus becoming authorized agents for the steamship lines. As such, the banks received commissions for the business written. This move on the part of the banks was the initial step toward banks offering a travel service and becoming authorized travel agents.

My point in bringing out this history is to indicate to you and to the members of your committee that banks are not entering into a new field of service, as can be construed from testimony already given by the representatives of ASTA. As you can see from the brief history given, banks can possibly be the father of the travel agency industry. If, back in the early years of travel, banks could serve and did serve a real and just purpose in the travel industry, why then are they ridiculed by some for doing the same type of service today? Banks are not taking the business away from the independent travel agent—how can they when banks have been in the travel agency business for 100 years. Contrary to ASTA's thinking, maybe banks should be objecting to the independent travel agent for infringing upon a service which is rightfully banking's.

It is apparent that ASTA forgets that we, in this country, live in a democracy and within an economy which is the greatest in the world. They forget that our economy has become the greatest because we believe in and operate under our free enterprise system. I remember distinctly during my years in banking, that banks have claimed finance companies, savings and loan associations, and credit unions should not invade the banking field. Drugstores claim supermarkets should not sell aspirin, mouthwash, and toothpaste. The lunchroom claims that drugstores should not maintain lunch counters. Obviously, in a free enterprise system, competition is its backbone, and it will arise from many sources. It appears that ASTA and its members cannot stand competition—that the competition from banks does not hurt them, but only annoys them. There are many department stores that maintain a full fledge travel facility. This type of operation is far more competitive to an independent travel agent than a bank travel facility. There are far more department stores eligible for a travel service than there are banks. Again the competitive factor and free enter-

prise operation comes out. If banks were monopolistic within the travel agency industry, ASTA and its members might have a reason to protest, but since there are about 60 times as many independent travel agents as there are bank travel agents (estimate 6,000 versus 100) I can see no reason for the subject of banks being in the travel business seriously becoming a part of the hearings and taking up the valuable time of you and your committee.

Another important point to bring out for which I am sure your committee is unfamiliar, is that many banks have gone into the travel agency business because there are more and more independent travel agents who find it to their advantage to sell their travel agency to a bank. There are hundreds of independent travel agencies today that are owned and operated by people who have been in the business 20, 30, and 40 years. These people are approaching the age of retirement, or are at an age where they cannot go along with the pressures of increased business which is now existing in the travel industry. As this age factor creeps upon them, disposing of their travel agency business is usually a must. When this situation develops, the agent is going to look out for himself, and not sacrifice his investment in the travel business. In order to assure himself his proper return from his investment, he must look to those who are financially able to purchase a going business. His approach may be to a bank, or maybe not, but I am sure that if a bank shows an interest, such an approach will be foremost in the agent's thinking.

In the statement made in behalf of ASTA before your committee, Mr. Hering in his opening paragraph referred to ASTA's membership as predominantly small businessmen, and again in the second paragraph on page 7 of his statement, Mr. Hering says, "The travel agency industry consists of small businessmen attempting to make a modest living." These are points well taken and undoubtedly true, and are ones that should be most important in the deliberations of the subject of banks in travel by your committee. I invite you to check with any economist and you will find that the travel and tourist industry is one of our fastest growing, if not our fastest growing industry, and possibly one of the five largest industries, not only in this country, but in the world. The travel-tourist industry is said to run into the tens of billions of dollars. If this is so, should such a tremendously potent industry be solely in the hands and operation of the independent travel agent who, according to ASTA, is a small businessman? Usually a small businessman's capital is small and limited. It is possible that his capital is not expanding with the growth of the travel industry as ASTA makes a point of the fact that the agent makes only a modest living. An industry having sales amounting into the billions of dollars needs tens of millions, if not hundreds of millions of dollars behind it. Sadly enough, the independent travel agent, the small businessman, does not possess this requirement. This is where a bank's participation within the travel agency industry adds so much and is so important. When making this statement, I do not mean that banks will buy out all independent travel agents and ultimately take over the travel agency business. Far from it. In all service industries there are diversifications, and in the case of the travel industry, it would be healthy for it to have banks share in its operation and growth. Financial responsibility and stability are a must in today's growing economy.

To show on one hand the importance of financial responsibility within the travel industry, and on the other, the lack of it, is the 1963 introduction of the compulsory Air Traffic Conference's bond requirement placed upon all travel agents. All agents, with the exception of banks and sufficiently capitalized agents (both are required to carry the minimum of \$9,000) are subjected to a good sized bond requirement and expense. This bonding action on the part of ATC and its carrier membership has saved them considerable money the last 2 years, for during that time losses by agents have run into the hundreds of thousands of dollars. There has been no losses by banks over the years, and because of this, all carriers, tour companies, hotels, resorts, etc., welcome us into the travel agency industry, not just because of our financial position, but also for our integrity and prestige. The traveling public also accepts us as their travel agent, and more will do so as years roll by. A client, when purchasing certain travel today, could be spending a considerable amount of money. As an example, one can spend thousands of dollars for steamship and cruise accommodations. On this type of travel, the cost of the accommodations must be paid well in advance of sailing date—usually a month or 6 weeks. It is here that the traveler looks for financial responsibility. When the traveler hands his money

over to his travel agent, he wants to be sure that his money goes toward the purchase of his travel arrangements and not for something else.

As the travel industry grows, naturally the volume of business and the dollars handled by the travel agents will grow with it. More people traveling, and more money being spent on travel, means greater responsibilities, both morally and financially, for the travel agent. I do not say that all independent travel agents cannot meet this obligation, or that they are not financially sound. My point is that the travel agency industry is a business that handles billions and billions of the traveling public's dollars and for the most part is in the hands of the independent travel agent who predominately is a small businessman who lacks the financial strength to carry on by himself the future growth of the travel industry. Because of this, the natural impulse of the traveling public will be to seek the agents they know are financially responsible. If this is true, then the various segments that make up the travel industry should insist that the travel agency industry should be made up in part by those agents that can add greater financial responsibility, then to insist on greater bond requirements.

Not to belabor the point on financial responsibility but to further show the tremendous importance of it in the travel industry, one reads continuously in the trade papers about defaults and other problems that exist within the realm of the independent travel agent. Because of such situations, I mention again a few years ago the travel agent was burdened with the bonding program placed on them by the airlines. Today the agent is fighting against the licensing of the travel agent by cities and States. If the independent travel agent was capable of handling the agency industry by himself, then there would be no need for bonding and licensing. Those two words in themselves spells the agents inability to control and operate their own industry. Again I say, the industry needs the participation of banks within it to add the necessary financial strength, responsibility, and integrity.

Mr. Hering of ASTA intimated in his statement that banking activities and travel activities were unrelated, and without the scope of normal fiduciary relationship between a bank and its customers. I cannot disagree more with Mr. Hering's and ASTA's thinking on these points. The relationship between banks and travel is mighty close. First and foremost has already been pointed out in the history of the travel industry. Banks have been in the travel agency business for at least 100 years, and have done an excellent job in serving the traveling public. Ever since banks have existed, they have served as agents and agencies in many capacities. As a travel agent they continue to serve in an agency capacity as does the independent travel agent. Furthermore, no one can deny that a person who is going to travel generally requires more than travel services. The traveler requires many related services, such as travelers' checks, foreign currency—maybe a travel loan and a supply of cash. They also may require the safekeeping of valuables in protected vaults while away on extended trips. Because of a bank's correspondent affiliations, it can offer a more complete travel service. VIP treatment for citizens of the community can be arranged easily, down to the last personal detail. Financial recommendations can be provided anywhere in the world. This type of recommendation is especially helpful when people move to a new location or plan an extended trip. Also, through the correspondent affiliation, transfer of funds is easily arranged—such a service can be most important to a traveler when an emergency arises while he is far away from home.

Some might claim that all these practices and qualities are unfair competition. Not in today's world. In today's economy and expansion of population, the various services offered to the people are being geared to serve the masses and not the individual. For the travel agency industry to serve the masses, it must look to those agents that have the qualifications to serve all of the interests of the traveling public, and not just those that the agent wants to supply. Just because some agents might consider a bank travel facility as unfair competition, is no reason to deprive the public of his choice of agent, and in instances, make him suffer.

Our membership feels that it is time for your committee to advise ASTA and the travel industry that banks do have a rightful place within the travel agency business. The question of banks being in the travel business has been debated in committees of Congress for years, and no reasoning or testimony has proven that the banks are in the wrong. Your committee knows as well as the banks that it is the welfare of the public that is to be protected and served, and not

selfishness and whims of the independent travel agent. It should be brought to the travel agents' attention that there is more at stake than their desire to completely contain the travel agency industry; that there is the travel industry itself, and those segments that make up the industry. In the final analysis, we all know that it is not the American Society of Travel Agents (ASTA) or the travel agents who puts the stamp of approval on the agents who will represent the carriers—it is the carriers themselves. It is through their conferences that they appoint their agents, and not through ASTA. Surely the carriers have the right to say who shall or who shall not represent them in the travel agency business. It is here that the carriers cannot be deprived of their freedom of choice.

Sincerely yours,

GEORGE M. MACLEOD, *President.*

* * *

These refer to my statement regarding defaults within the realm of the independent travel agent.

[From Travel Weekly, Mar. 8, 1966]

AGENCY DEFAULT RECORD DIMS HOPE FOR BOND CUT

HINT AIRLINES WEIGH ADDITIONAL COVERAGE

(Special to Travel Weekly)

WASHINGTON, March 4.—There was mounting evidence this week that when the domestic airlines report to the CAB on or before April 1 on their financial "experiences" under the standard ticket and area settlement plan, they will not propose lower minimum bonding requirements for travel agents as the Board had requested.

There is, in fact, speculation that the ATC carriers, motivated by a substantial increase in dollar losses from agency defaults, have even been exploring the possibility of an increase in the \$10,000 minimum bond coverage.

Last summer, in an order giving permanent approval to the standard ticket program, the CAB stressed that the "reduction in the loss exposure period to 20 days (under the three-times-a-month remittance frequency) amounts to a 35-percent "reduction" in risk. The Board at that time indicated that the airlines should strive for a comparable reduction in bonding coverage.

The Board also told the ATC lines last June that a full report on agency defaults would be required within 4 months of standard ticket implementation in the final bank area, but not later than April 1, 1966.

Travel Weekly learns that the preliminary figures compiled for this report have caused concern among carriers.

43 DOMESTIC DEFAULTS

They show that during the calendar year of 1963, before any agents were subject to the new program, that there were 43 domestic air defaults with losses totaling \$440,000.

The experience during 1964, when the first few agents came under the jurisdiction of the area settlement provisions, was somewhat similar. During that year 35 defaults totaled \$423,000.

Last year, when virtually all domestic agents went into the program, there were 41 defaults (22 by agents in the plan, 19 by agents still not covered), with losses reaching nearly \$550,000.

Thus, with all the controls built into the area settlement reporting and remitting procedures, the airlines find that even allowing for a greater number of agents, default losses appear to have vaulted more than 25 percent in the 2 years between the introduction and the first full year. Said one carrier source: "The default situation is definitely deteriorating."

AVERAGE INCREASES SHARPLY

Further, the amount of the individual defaults has also risen sharply. In 1963, the average default came to about \$10,000; in 1965, more than \$13,000. (One possible explanation offered by carrier sources: with the agent's dollar float

reduced by the increased remittance frequency, more and more of them are forced to turn to banks for additional working capital, leading to larger debts and losses for those in financial straits.)

And, as previously reported in these columns, the airlines are also worried over mounting administrative costs involved in agency defaults, as well as the fact that many of the bonds do not cover the full amount of the default.

Preliminary figures show that in 1963, when total defaults reached \$440,000, the total bond coverage was about \$560,000, and the carriers recovered \$284,000, or 58 percent of the losses.

In 1964, defaults came to \$442,000, bond coverage totaled \$574,000, and the lines recouped \$302,000, or 71 percent.

Last year, defaults approached \$550,000, bond coverage \$635,000; but no final figures are available on the amount recovered by the lines.

All 43 defaults in 1963 involved agents not in the standard ticket plan; in 1964, 33 were not in the program, 2 were; and in 1965, 19 were not covered, 22 were.

The ATC had 4,703 appointed agents in 1963; 5,110 in 1964; and 5,201 last year.

Other pertinent statistics show that in 1963, eight defaults were in excess of the bond coverage, including \$20,000 where there was no bond; \$31,000 on a \$10,000 bond; \$55,000 on a \$50,000 bond; \$35,000 on a \$10,000 bond; \$29,000 on a \$10,000 bond; and \$16,000 on a \$10,000 bond.

In 1964, seven defaults exceeded the coverage, including \$32,000 on a \$16,000 bond; \$42,000 on a \$10,000 bond; \$62,000 on a \$50,000 bond, and \$21,000 on a \$10,000 bond.

The 1965 records show 11 defaults in this category. Four defaults by agents not under the standard ticket plan included \$56,000 on \$50,000; \$44,000 on \$35,000; \$14,000 on \$10,000; and \$15,000 on \$10,000. Seven defaults by agents in the plan were \$71,000 on \$50,000; \$47,000 on \$10,000; \$48,000 on \$25,000; \$28,000 on \$15,000; \$18,000 on \$10,000; \$13,000 on \$10,000; and \$22,000 on \$17,000.

The high default incidence was reflected by the decision of New Hampshire Insurance Co., which had bonded nearly 900 agents, to withdraw from the field entirely, effective January 1.

In discussing ways to combat this situation, the airlines have also considered methods to tighten up their own internal reporting, administrative systems, and supervision, as well as faster interchange of default data among themselves.

* * *

[From Travel Weekly, Mar. 22, 1966]

DEFAULT FIGURES STRESS HAZARDS FACING NEWLY APPOINTED AGENTS

(Travel Weekly exclusive)

NEW YORK, March 17.—Despite tougher agency bonding and rigid ticket settlement rules designed to minimize financial pitfalls, the domestic airlines face the unpleasant fact that travel agency defaults have apparently been increasing in both size and frequency.

This conclusion emerges from a further Travel Weekly analysis of preliminary default figures covering the past 3 years, which will form the basis of an air traffic conference report to be filed with the CAB at the end of this month. (First highlights of the default data were reported exclusively in Travel Weekly, Mar. 8.)

* * *

This refers to my statement as to problems existing within the realm of the independent travel agent.

[From Travel Weekly, Mar. 8, 1966]

SUSPEND COAST AGENT IN OVERRIDE DISPUTE

(Special to Travel Weekly)

WASHINGTON, March 3.—An arbitration panel has ordered a California travel agent suspended from the agency list for 2 months for collecting a 10-percent tour commission on point-to-point air ticket sales.

The agent was charged by the Air Traffic Conference with 68 separate cases of improperly collecting extra commissions on point-to-point travel. ATC ordered the agent taken off the agency list but this action was modified by the arbiters.

In its decision to change the ATC cancellation order to a 60-day suspension, the arbitration panel said: "The agent's violations of the sales agency agreement have been numerous * * * [But] we are not prepared to remove [him] from the approved list at this time. This is a drastic remedy * * *."

Suspension will run from March 1 to April 29. In addition to suspension, the arbitration panel also recommended that "ATC audit the agent from time to time to further encourage compliance with the sales agency agreement and other applicable regulations."

* * *

This points out the weaknesses within the realm of the independent travel agent.

The Association of Bank Travel Bureaus have fought licensing in any form, and so far, have been on the winning side.

[From Travel Weekly, Mar. 8, 1966]

LICENSE BILL WOULD EXEMPT "NONPROFITS"

(Special to Travel Weekly)

NEW YORK, March 3.—A New York State bill to license travel agents was amended this week to exempt nonprofit "religious, charitable, and educational" organizations.

Assemblyman Max Turshen, the sponsor of the bill, and Attorney General Louis Lefkowitz agreed to the exemption. The bid by the American Jewish Congress to gain exclusion from the licensing provisions was revealed exclusively by Travel Weekly March 1.

The amendment states that the bill shall not apply to a "tax-exempt" group "which organizes for its own members only travel or tours substantially related to its religious, charitable, or educational programs."

Meanwhile, upstate ASTA president, John Gauntlett declared this week that his chapter is "united" with national ASTA in seeking amendments to the Turshen-Proller bill that would make a distinction between conference-approved and nonconference agents.

In an apparent reference to licensing proponent Joel Epstein, Schenectady Travel, Gauntlett urged chapter members to refrain from writing letters to State legislators "that can be interpreted as support of the Turshen-Proller bill as now written."

On another front, New York City Councilman Joseph Ruggieri this week re-introduced his licensing measure, which was referred to the city affairs committee.

* * *

ASTA and its membership fight banks which have financial stability, integrity, and prestige, and let this sort of operation go on. A franchise "epidemic" within the industry could be murder for every independent travel agent now in existence.

[From Travel Weekly, Mar. 8, 1966]

AGENCY'S FRANCHISE PLAN CALLS FOR 75 LOCATIONS BY JANUARY 1

(Travel Weekly exclusive)

PHILADELPHIA, March 3.—As reported in last week's issue, Adams Travel Bureau will retain control of each branch location being developed in its franchise operation for a 3-year period. The agency's program calls for the opening of 75 branch locations by next January 1.

Charles J. Sena, president, told Travel Weekly that "an application for any conference appointment for a branch location will not be submitted until Adams Travel is satisfied that the employees of that location meet the qualifications required by the conferences."

He said that Adams Travel had received deposits from 15 investors who will be appointed "branch sales managers" of the agency's locations. Under a 3-year contract with Adams Travel, branch sales managers are required to make an initial investment of \$4,000. In addition, investors should have working capital of at least \$5,000.

Although branch sales managers are assured that they can retain 99 percent of the gross sales at each location, they "are not guaranteed any conference appointments by Adams Travel," Sena noted.

"If a branch location's application for conference approval is rejected, we will make a full refund of the branch sales manager's investment," he said. "Under the contract, an investor, if he so desires, can after 3 years open his own agency and apply for conference appointments under his own name."

APPLICATIONS FOR APPOINTMENTS

Sena said that after each branch sales manager had been in business for about a year, the parent agency would give him all possible assistance in applying for conference appointments directly. "We've had many meetings with the conferences," he noted. "They've never officially approved or disapproved our branch location plan. They have just stated that each application for a branch location would be treated on the merits of the particular location."

Observing that the franchise program would strongly emphasize group and incentive travel, Sena said: "We realize that we are responsible for all acts of each location. There will be an account executive assigned to each location. It will be his job to get the location physically in the travel business. In cooperation with the branch sales manager, he will call on employee groups, clubs, and associations to promote incentive and group travel.

"A major stipulation of the contract is that the branch sales manager must make a minimum of five calls a week on these organizations. If he fails to do so on three occasions, we reserve the right to dismiss him. By the same token, the contract protects the investor. If we fail to provide our services as agreed, then he has the right to be released from the contract."

Sena said that final arrangements were being completed this week for the opening of branch locations in seven areas—Atlantic City, Ho-ho-kus, and Teaneck, N.J.; Willow Grove Pa.; Long Island and Utica, N.Y., and eastern Cuyahoga County, Ohio. He said that additional branches would be established in the spring in Cleveland, Baltimore, Pittsburgh, and New York.

The agency's franchise program was outlined to district sales managers of 24 domestic and IATA airlines at a luncheon meeting here.

MARC A. FREDERICK, Sr., & Co.,
Long Beach, Calif., July 26, 1966.

Representative CRAIG HOSMER,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE HOSMER: I am writing to give you my views with regard to H.R. 10529, the Multer bill.

You are undoubtedly aware of the fact that banks throughout this country have infringed on the accounting practice as well as many other forms of business activity. There are many reasons why this is undesirable, but two of these reasons are outstanding:

1. Conflict of interest.

2. Infringement on the accounting profession and other businesses is not in the best public interest.

To elaborate briefly. It would be difficult to prove, I am sure, but you and I knowing the nature of the human species, it is difficult, if not impossible, to imagine that the average banker is not influenced (at least to some extent) when making a loan or servicing an account, which is engaged in performing services similar to that which the bank performs, such as accountants with data processing machines or service bureaus. These banks are now in competition with their own customers. Can you imagine the bank making a loan to help his competitor? To think or surmise that most would be "above" this, would be naive to say the least.

As for item 2, the banks are not trained accountants nor do they carry the professional liability for their work as the accounting profession does. Many computer operators, though excellent programmers, systems analysts, etc., are none the less unqualified accountants. This, you must agree with me, is definitely not in the best public interest. In addition, the introduction of untrained per-

sonnel into the accounting profession is detrimental to members of the general public, who have to rely on these untrained people's judgment which is reflected in the accounting and recordkeeping reports, put out by these banks.

The power of the banks make it almost impossible for us to compete. They may (and do) go out and solicit business while we are forbidden so to do through our code of ethics. Both the AICPA and NSPA to which my partner and I belong do not condone the act of soliciting business. Furthermore, the banks could make the granting of a loan contingent upon the loanee letting the banks do his accounting.

I could go on and on, but I am certain that you must be aware of and understand these views and their possible consequence, as well as that of our national societies, and our Society of California Accountants and the California Society of Certified Public Accountants.

We ask that you publicly state your position on the Multer bill prior to this fall's election.

I would also like personally to know your position on this matter.

Sincerely,

MARC A. FREDERICK, Sr.,
Public Accountant.



