reclaimed leased property, the banks could not conduct the leasing business. Thus, the issue presented by your letter is whether Federal law preempts a state law that restricts an essential aspect or component of an activity expressly authorized for a national bank.

Preemptive effect of Federal law

When the federal government acts within the sphere of authority conferred upon it by the Constitution, the Supreme Court has held that Federal law is paramount over, and thus preempts, state law. U.S. Const. art. VI, cl. 2 (the Supremacy Clause); Cohen v. Virginia, 19 U.S. (6 Wheat.) 264, 414 (1821) (Marshall, C.J.). Federal authority over national banks stems from several constitutional sources, including the Necessary and Proper Clause and the Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl.3, cl. 18; McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 409 (1819).

The United States Supreme Court has identified several bases for Federal preemption of state law. First, Congress may enact a statute that preempts state law. E.g., Jones v. Rath Packing Co., 430 U.S. 519 (1977). Second, a Federal statute may create a scheme of Federal regulation ''so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.'' Rice v. Norman Williams Co., 458 U.S. 654, 659 (1982). Third, the state law may conflict with a Federal law. See, e.g., Franklin National Bank, supra; Davis v. Elmira Savings Bank, 161 U.S. 275 (1896).

In elaborating on the concept of conflict, the Supreme Court has recognized that conflict may exist even where compliance with both Federal and state law is possible. The Barnett court recognized that—

Federal law may be in ''irreconcilable conflict'' with state law. Rice v. Norman Williams Co., 458 U.S. 654, 659 (1982). Compliance with both statutes, for example, may be a ''physical impossibility,'' Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142–143 (1963); *or,* the state law may ''*stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.*'' Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

Barnett Bank v. Nelson, 517 U.S. 25, 31 (1996) (emphasis added).

The Supreme Court has recognized that state law generally should not limit powers granted by Congress—

In using the word ''powers,'' the statute chooses a legal concept that, in the context of national bank legislation, has a history. That history is one of interpreting grants of both enumerated and incidental ''powers'' to national banks as grants of authority not normally limited by, but rather ordinarily preempting, contrary state law.

Barnett, 517 U.S. at 32. See also Bank One v. Guttau, 190 F.3d 844, 847 (8th Cir.1999).

In determining whether a state law stands as an obstacle to a national bank's exercise of a Federally authorized power, the Supreme Court has evaluated whether a state statute interferes with the ability of a national bank to exercise that power. The Barnett Court stated that—

In defining the pre-emptive scope of statutes and regulations granting a power to national banks, these cases [i.e., national bank preemption cases] take the view that normally Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where * * * doing so does not prevent or significantly interfere with the national bank's exercise of its powers.

Barnett, 517 U.S. at 33.

The Court has held that Federal law preempts not only state laws that purport to prohibit a national bank from engaging in an activity permissible under Federal law but also state laws that condition the exercise by a national bank of a Federally authorized activity.

[W]here Congress has not expressly conditioned the grant of 'power' upon a grant of state permission, the Court has ordinarily found that no such condition applies. In Franklin Nat. Bank, the Court made this point explicit. It held that Congress did not intend to subject national banks' power to local restrictions because the federal power-granting statute there in question contained 'no indication that Congress[so] intended * * * as it has done by express language in several other instances.'

Barnett, 517 U.S. at 34 (citations omitted; emphasis in original).

Thus, a conflict between state law and Federal law need not be complete in order for Federal law to have preemptive effect. If a state law places limits on an unrestricted grant of authority under Federal law, the state law will be preempted.[8]

Application to Ohio law

In disposing of reclaimed property, national banks, like any other businesses, will endeavor to maximize their recovery on the property by disposing of it in the manner that will bring the highest return. In the case of national banks, the ordinary motivation to maximize return and minimize loss is reinforced by the legal obligation to operate in a safe and sound manner. National banks that engage in the business of automobile leasing are required by regulation to liquidate or re-lease such property as soon as practicable. 12 CFR 23.4(c). This requirement is contained in a section of the OCC's regulations designed ensure that national banks limit their exposure by conducting their leasing businesses in a safe and sound manner. See 12 CFR Part 23. A state law that prohibits a bank from disposing of off-lease property in the way that is most economically beneficial not only limits the bank's exercise of its Federally authorized power, but also increases the bank's loss exposure in a manner that is inconsistent with safe and sound banking principles.

While the Ohio law, as interpreted by the OBMV, does not prohibit a national bank from disposing of reclaimed vehicles, it does restrict national banks from disposing of leased vehicles in one of the usual and customary ways of doing so, namely, selling directly to the public. You have represented that the Banks' experience indicates that selling reclaimed vehicles directly to the public is the best way to recover vehicle costs. The OBMV has interpreted Ohio law to prohibit lessors from selling reclaimed vehicles at non-dealer auctions.

In our opinion, to the extent it is interpreted and applied in this manner, Ohio law frustrates the Banks' ability to operate their leasing businesses in an economically efficient manner consistent with safe and sound banking principles. Applying the standards set forth in Barnett, the state law significantly interferes with the Banks' exercise of their Federal powers. Therefore, it is our opinion that Federal law preempts the Ohio statute as interpreted by the OBMV.

Our conclusions are based on the facts and representations made in your letter. Any material change in facts or circumstances could affect the conclusions stated in this letter.

Sincerely,

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

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[8] See also OCC Interpretive Letter No. 866 (Oct. 8, 1999) (opining that state law requirements that preclude national banks from soliciting trust business from customers located in states other than where the bank's main office is located would be preempted); OCC Interpretive Letter No. 749 (Sept. 13, 1996) (opining that state law requiring national banks to be licensed by the state to sell annuities would be preempted); OCC Interpretive Letter 644 (March 24, 1994) (opining that state registration and fee requirements imposed on mortgage lenders would be preempted).

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Tuesday and Wednesday, May 22–23, 2001, at VA Headquarters, Room 230, 810 Vermont Avenue, NW., Washington, DC. The May 22 session will convene at 8 a.m. and adjourn at 4 p.m. and the May 23 session will convene at 8 a.m. and adjourn at 12 noon. The purpose of the Committee is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or

other serious incapacities in terms of daily life functions.

On the morning of May 22, the Committee will hold a joint meeting with the Veterans' Advisory Committee on Rehabilitation to discuss mutual issues and concerns. Both Committees will also receive a briefing on the current status of the rehabilitation bed issue by the Chief Consultant of the Rehabilitation Strategic Healthcare Group. At the conclusion of the joint meeting, the Advisory Committee on Prosthetics and Special-Disabilities Programs will receive briefings by the National Program Directors of the Special-Disabilities Programs regarding the status of their activities over the last six months. In the afternoon, a briefing concerning the current status of VA's Capacity Report will be presented by the newly appointed Clinical Coordinator or her designee. On the morning of May 23, the Committee will continue to receive briefings by the National Program Directors of the special disability programs, i.e., spinal cord injury, blind rehabilitation, audiology and speech pathology, and prosthetics.

The meeting is open to the public. For those wishing to attend, please contact Ms. Kathy Pessagno, Veterans Health Administration (113), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–8512, prior to the meeting.

Dated: May 2, 2001.

By Direction of the Secretary.

Ventris C. Gibson,

Committee Management Officer.

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