

MINUTES OF THE REGULAR MEETING
OF THE STATE BANKING BOARD

JANUARY 21, 2004

As first item in order of business on the agenda, Chairman Thompson called the Banking Board meeting to order at 10:00 a.m., pursuant to the Agenda that was posted for public display prior to 10:00 a.m. on January 20, 2004. The meeting was held in the Conference Room of the State Banking Department, Oklahoma City, Oklahoma.

Second item on the agenda was roll call; the following members were present:

Mick Thompson, Chairman
Cheri Cartwright
Gary Huckabay
Gordon Greer
Bob Newcomb

Member Conn and Member Goad were absent.

Also present: Dudley Gilbert, Legal Counsel; Randy Brooks, Director of Examinations; Harold Reel, Assistant Deputy Commissioner; Sherbie Kiffin, Assistant Deputy Commissioner; Rhonda Bruno, Budget Director; Stacey Tayar, Administrative Assistant; and Angela Morris, Secretary.

The Chairman noted for the record that a quorum was present.

Third item on the agenda, Chairman Thompson called for approval or discussion of the Minutes of the Regular Meeting of the State Banking Board held December 17, 2003. Member Greer made the motion for approval. Motion was seconded and approved as follows:

Gary Huckabay – voted yes
Gordon Greer – voted yes
Bob Newcomb - abstained

Fourth item on the agenda, Commissioner's Monthly Reports:

A. Department Status Update.

Chairman Thompson said the ruling by the Comptroller of the Currency (OCC) regarding preemption and visitorial authority is a current issue. He gave Board members a copy of a memo from CSBS dated January 8, 2004. He read a statement from the Independent Community Bankers of America providing that the OCC has issued two rules that become effective thirty days from the time they are issued (which was last week). The first rule establishes areas of state law that do not apply to national banks' lending or deposit taking activities. The rule pre-empts state law on lending that affects licensing, terms of credit, permissible interest rates, escrow accounts, disclosure, and

advertising. That rule also pre-empts state laws on bank deposits that require specific disclosure, licensing, abandonment of dormant accounts, checking accounts and funds availability. The second rule affirms that the OCC has exclusive supervisory authority over all national bank activities. Any action involved in the exercise of national banks power created by the federal government is solely supervised by the OCC, not any state or local official. Operating subsidiaries, according to the OCC, function with the same powers and under the same regulations as a national bank and both rules apply to the operating subsidiaries in the same way as they apply to national banks.

Chairman Thompson said last year a law was passed in Oklahoma on predatory lending which was worked on by bankers, agreed upon by the industry and consumer groups. That bill will be preempted by the OCC's rules. Whatever that rule said would affect a state-chartered bank, will be preempted for national banks, meaning there are two separate rules that banks will be operating under. From the national standpoint of CSBS, an issue that affects the industry and consumers should not be arbitrarily set by a beauracrat by setting the rule. This is an issue that should come before Congress, have hearings and Congress passes the rule to apply to all banks. Two playing fields have been set, which now gives national banks an advantage because they can avoid all state laws. All fifty Attorney Generals signed a letter and sent it to Chairman Hawke protesting the rule and asking him not to implement the rule, to wait and have hearings first. The National Governor's Association, most of Oklahoma's Congressional delegation, Chairman of the Senate Banking Committee, House Banking Committee, and New York delegation also sent letters to Chairman Hawke to wait before implementing these rules. This is a national issue that might not have a big impact on Oklahoma, but will be in some states. Chairman Hawke waited for Congress to adjourn for Christmas break and then implemented his rules. Congress is not pleased that he has done this. New York Congresswoman has asked for hearings on this issue and the first hearing will be held January 28, 2004.

Member Greer asked if part of this was agitated by the State of California when the OCC came in and made some rulings on some mortgage loans?

Chairman Thompson said the primary push behind the OCC's rule was the Georgia Fair Lending Act that was preempted last summer.

Member Huckabay asked if there is any executive branch of government involved?

Chairman Thompson said the Comptroller is appointed by the President and works for the Treasury Department. He said they are aware, but haven't made any comments.

Chairman Thompson welcomed Board Member Cartwright at 10:08 a.m.

B. Examination Report .

Chairman Thompson gave the monthly examination report showing that during the month of December two fed member banks, eight nonmember banks, two credit unions, two trust departments, and four cemeteries were examined. Examinations in process at the end of December were twelve banks, four cemeteries, and one trust department.

Thirteen examiners attended the FDIC USA Patriot Act Training in Tulsa and Oklahoma City.

Two employees attended the CSBS Supervisors Symposium in San Francisco, California.

Three examiners attended the OSU Farm & Business Tax Institute Seminar in Oklahoma City.

Chairman Thompson said the Department is up to date on examinations.

C. Legislative Update

Chairman Thompson said a bill has been filed by the OBA for proposed legislation for the Oklahoma Uniform Trust Code.

Member Greer asked if this is a rewrite of the Code?

Chairman Thompson said yes. He said as soon as a summary is received regarding this bill, the Board members will be sent a copy.

Chairman Thompson said a shell bill was filed yesterday by the Chairman of the Banking Committee, but there are no changes being made by the Department.

Chairman Thompson discussed the Department's Expenditure Summary. He said the General Revenue and 210 Revolving Fund will go away July 1 since we don't receive this money anymore. The bank revolving fund and cemetery fund will be the only two we have. He said it will take time for this information to make sense.

Member Huckabay asked if assessments and fees can be broken out separately?

Chairman Thompson said that information is on the second page. He said \$1,500,000 is in the bank fund and on March 1, 2004, the Department will have to give \$1,050,000 to the general revenue fund. That money is basically from the special assessments.

Member Newcomb said none of the regular assessments are included.

Chairman Thompson said that is correct. The regular assessments are coming in now.

Chairman Thompson said the second page shows a breakdown of all fees the Department receives.

Member Greer asked what the \$20,000 refund was?

Rhonda Bruno said it was a payroll glitch and has been corrected.

Chairman Thompson said a new system was implemented in November for the state. It combined payroll, travel, etc. into one system. He said some agencies are getting second and third notices from vendors because the payments won't go through the system.

Member Huckabay said this is excellent income information. He asked if expenditure information can also be provided?

Chairman Thompson said yes.

D. Pending Applications

Fifth item on the agenda, Consideration of Request for Approval of Merger and Application for Certificate to Maintain and Operate a Branch by Acquisition:

- A. Application for Merger of Lincoln National Bank, Oklahoma City, Oklahoma, with and into BancFirst, Oklahoma City, Oklahoma, pursuant to Title 6 O.S. § 1103.
- B. Branch Application of BancFirst, Oklahoma City, Oklahoma, pursuant to Title 6 O.S. § 501.2 and O.A.C. 85:10-9-2.

Branch by Acquisition – proposed bank to be acquired and converted to a branch:
Lincoln National Bank, Oklahoma City, Oklahoma.
Proposed Name: "BancFirst – Oklahoma City"

Dave Huebert, BancFirst, and James Finch, President of Lincoln National Bank, were present to answer questions.

Chairman Thompson said Randall Brooks prepared the Department Analysis if there are any questions about it.

Mr. Huebert said these are two subsidiary banks owned by BancFirst and basically is only a consolidation of the two.

Member Huckabay made the motion to approve the merger. Motion was seconded and approved as follows:

Gary Huckabay – voted yes
Cheri Cartwright – voted yes
Bob Newcomb – voted yes
Gordon Greer – abstained

Member Huckabay made the motion to approve the branch application. Motion was seconded and approved as follows:

Gary Huckabay – voted yes
Cheri Cartwright – voted yes
Bob Newcomb – voted yes
Gordon Greer – abstained

Sixth item on the agenda was Discussion of Proposed Amendments to Banking Board Rule 85:10-3-21 relating to fees.

Chairman Thompson asked Dudley Gilbert to explain the rulemaking process.

Mr. Gilbert said the process usually starts in October-November. The OBA, Department staff, and Board are asked to look to see if there are any changes that need to be made regarding the rules. Notice of Intent to amend a rule is filed with the Office of Administrative Rules in December, then usually published in January. The proposed amendments will be voted on at the February Board Meeting, not today. Today is for discussion of the proposal only.

Mr. Gilbert said the first change is to subsection (a)(2). He said during 2000 legislative session Section 502 was amended to delete subsection 502(G) and (H). This change is to clarify the rule to be the same as the statute.

Mr. Gilbert said the next change is to subsection (d). He said this change is to clarify that the fee for an operating subsidiary and financial subsidiary are the same. It also raises the fee from \$1,000 to \$2,000. One reason for the change is to make these applications the same as those for a branch. These type of applications often take as much or more time to review than the branch applications. The total revenue increase will be less than ½ of 1%.

Member Huckabay asked who has most of the workload regarding operating or financial subsidiaries?

Mr. Gilbert said this varies. Sometimes there are out-of-state laws that have to be researched, some applications are standard and some are complex.

Mr. Gilbert said the next change is to subsection (j). This will raise the fee for registration statements from \$250 to \$500. He said these statements are filed by out-of-state companies wanting to do business in Oklahoma. He said in 2002, there was an out-of-state bank in Delaware (payday lending group) doing business here and after two years of threatened litigation and changes to the law, we finally convinced the bank that it either had to register or stop doing business in the state. The bank chose to leave the state.

Member Greer asked if this is an annual fee?

Mr. Gilbert said yes.

Member Greer asked how many registration companies there are and is it voluntary for them to register?

Mr. Gilbert said thirty-two. He said it is not voluntary. He said a lot of companies are caught because they have to file documents with the Secretary of State's office and the Secretary of State's office will not approve any documents with the word "bank, bankers, trust, etc." So then they are sent to our Department for name approval and then we ask for them to file the registration statement.

Member Huckabay asked if all registration statements are small companies?

Mr. Gilbert said no, some are quite large.

Member Newcomb asked if the fee should be \$1,000 for registration statements?

Member Greer said doubling the fee should not cause any problem, but tripling the fee may not send a good message.

Member Huckabay asked if operating and financial subsidiaries can be changed back to \$1,000 and raise registration statements to \$1,000 to make them all the same?

Member Newcomb said banks won't mind the operating and financial subsidiary increase.

Member Greer agreed.

Chairman Thompson asked that any comments or changes you have be sent to Mr. Gilbert in the next couple of weeks so they can be put on the February agenda for approval.

New business. The Commissioner said Chase Bank has purchased Bank One and is in contact with the New York Banking Department to help keep Chase Bank as a state charter in New York. He said the Department will have an agreement with New York if it stays a state charter and our Department will probably help with exams.

Member Huckabay asked where the fee charged to help with exams is on the budget information?

Ms. Bruno said it is under the special exam column.

Chairman Thompson said nationwide non-bank ATMs are not regulated and it's not known who owns them. The Department will be contacting all state chartered banks, credit unions, and savings associations asking them to send a list showing all ATM locations to the Department. The Department will then look at how to monitor the non-bank ATM's. National banks at some point will also be contacted and given the chance to let us know where their locations are (some financial information may be required). A database will be built to track ATM's and each ATM will have an assigned number.

Chairman Thompson said they are looking at ways to inform consumers that if the seal the Department provides for ATM's is not on the machine, they are using the ATM at their own risk. He said this is the information gathering stage for ATM's and will have more information at the next Board meeting.

Member Newcomb made the motion to adjourn at 11:15 a.m. Motion was seconded and unanimously approved as follows:

Gary Huckabay – voted yes
Cheri Cartwright – voted yes
Bob Newcomb – voted yes
Gordon Greer – voted yes

Mick Thompson, Chairman

Gary Huckabay

Cheri Cartwright

Gordon Greer

Bob Newcomb