

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 47

BANKS AND BANKING - Federal reserve and national banks as federal agencies;
CONTRACTS - Motor carriers and federal agencies;
MOTOR CARRIERS - Contracts with federal reserve and national banks;
UNITED STATES - Federal reserve and national banks as federal agencies;
MONTANA CODE ANNOTATED - Section 69-12-324.

HELD: Both federal reserve banks and national banks are agencies of the United States government for purposes of the Montana Motor Carrier Act, in particular, section 69-12-324(1), MCA.

27 January 1982

Opal Winebrenner
Staff Attorney
Public Service Commission
1227 11th Avenue
Helena, Montana 59620

Dear Ms. Winebrenner:

You have requested my opinion on the following question:

Whether a federal reserve bank or a national bank is considered an agency or department of the federal government for the purposes of the Montana Motor Carrier Act, particularly section 69-12-324, MCA.

Title 69, chapter 12, part 3, of the Montana Code Annotated generally provides that motor carriers in Montana must obtain a certificate of public convenience

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and necessity from the Public Service Commission before operating in the State. Section 69-12-324, MCA, sets forth certain exceptions to this basic rule. In particular, subsection (1) of that statute provides that a contract between a motor carrier and the United States government or "an agency or department thereof" for the transportation of persons or commodities is deemed to be sufficient proof of public convenience and necessity. Therefore, when such a contract exists, the hearing normally required on that issue is obviated.

In the case you have presented, Security Armored Transport is contemplating entering into a contract with the Federal Reserve Bank in Helena and certain national banks for the transportation of commodities between those institutions. The question has arisen whether federal reserve banks and national banks are considered to be agencies of the federal government under section 69-12-324, MCA.

The Federal Reserve System is a central bank system charged with assisting in the attainment of national economic and fiscal goals through its ability to influence the availability and cost of money and credit in the economy. Members of the Federal Reserve Board are appointed by the President with the approval of the Senate. Each branch bank within the system has its own board of directors which guides the particular bank's operations, but all federal reserve banks are under the general supervision and regulatory power of the Federal Reserve Board.

Questions concerning the role and character of federal reserve banks have produced a long and consistent line of case law holding that such banks are agencies of the federal government. E.g., Raichle v. Federal Reserve Bank, 34 F.2d 910, 916 (2d Cir. 1929); Committee to Save the Fox Building v. Birmingham Branch of the Federal Reserve Bank, 497 F. Supp. 504, 509 (N.D. Ala. 1980); Brinks, Inc. v. Board of Governors, 466 F. Supp. 116, 118-19 (D. D.C. 1979). Based upon the applicable judicial authority and the integral part played by federal reserve banks in the promotion of federal economic policies, it is my opinion that the reference in section 69-12-324(1), MCA, to contracts with agencies of the United States government includes contracts with federal reserve banks.

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National banks are chartered by the United States Treasury Department's Comptroller of the Currency, who has primary responsibility for their regulation and supervision. The banks are required to be members of the Federal Reserve System and are subject to the general regulatory power of the Federal Reserve.

As pointed out in your inquiry, national banks perform many functions similar to those undertaken by private commercial banks, such as providing checking, savings, and lending services and sharing profits with stockholders. Moreover, Congress, in the interest of competition, has given the states the power to regulate various incidental operations of national banks and to impose certain state taxes on those institutions.

Regardless of their similarity to private banks and the ability of states to regulate or tax national banks in some areas, the majority of the cases dealing with the status of national banks has held that they are considered to be agencies or instrumentalities of the federal government. See, e.g., Mercantile National Bank v. Langdeau, 371 U.S. 555, 558-59 (1963); First National Bank v. Anderson, 269 U.S. 341, 347 (1926); United Missouri Bank v. Danforth, 394 F. Supp. 774, 785 (W.D. Mo. 1975); Zarrell v. Bank of America National Trust & Savings Association, 327 P.2d 436, 438 (Wash. 1958); cf. First Agricultural National Bank v. State Tax Commission, 229 N.E.2d 245, 248, 255-56 (Mass. 1967). The Montana Supreme Court has also specifically held that national banks are federal agencies, responsible, at least in part, for implementation of national economic and financial policies. State ex rel. Powell v. State Bank of Moore, 90 Mont. 539, 555, 4 P.2d 717, 720-21 (1931); Montana National Bank v. Yellowstone County, 78 Mont. 62, 76, 252 P. 876, 879 (1926). These authorities make it clear that the limited power of the state to impose operational conditions or taxes on national banks is based upon a specific grant of such power by Congress, and not upon any inherent state power or lack of agential relationship between the banks and the federal government. See Mercantile National Bank, 371 U.S. at 558-59; Montana National Bank, 90 Mont. at 555, 252 P. at 879.

Section 69-12-324(1), MCA, refers generally to contracts with agencies or departments of the United States government. It does not, by its language, exclude

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agencies over which Congress has allowed the states to exert limited control. Based upon the plain language of the statute and the authorities cited above, particularly the decisions of the United States and Montana Supreme Courts, it is my opinion that national banks must be considered agencies of the federal government under section 69-12-324(1), MCA.

THEREFORE, IT IS MY OPINION:

Both federal reserve banks and national banks are agencies of the United States government for purposes of the Montana Motor Carrier Act, in particular, section 69-12-324(1), MCA.

Very truly yours,

MIKE GREELY
Attorney General