Michigan Law Review

Volume 52 | Issue 8

1954

BANKS AND BANKING-NATIONAL BANKS-AMENABILITY TO STATE STATUTE RESTRICTING USE OF WORD "SAVINGS"

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BANKS AND BANKING—NATIONAL BANKS—AMENABILITY TO STATE STATUTE RESTRICTING USE OF WORD "SAVINGS"—Defendant, a bank organized under the National Bank Act[1] and transacting business in the State of New York, used the words "saving" and "savings" in various ways in the advertising and conduct of its banking business. The state brought suit, seeking an injunction restraining the use of these words, alleging that in so using them defendant had violated subdivision 1 of section 258 of the New York Banking Law.[2] In defense, the bank contended that this provision, as it applied to national banks, was unconstitutional as a contravention of federal statutory provisions.[3] The trial court dismissed the complaint on its merits,[4] but this was reversed by the appellate division,[5] whose decision was affirmed by the New York Court of Appeals.[6] On appeal to the Supreme Court of the United States, *held*, reversed, one justice dissenting. Defendant as a national bank is authorized to receive savings deposits.[7] A necessary incident to this is the power to advertise the availability of these accounts to the public. Therefore, a state's attempt to restrict this power is invalid.[8] *Franklin National Bank of Franklin Square v. New York*, 347 U.S. 373, 74 S.Ct. 550 (1954).

The basis of subdivision 1 of section 258 of the New York Banking Law

[1] 12 U.S.C. (1946) §§21-95.

[2] "No bank, trust company, national bank, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan association shall make use of the word 'saving' or 'savings' or their equivalent in its banking or financial business, or use any advertisement containing the word 'saving' or 'savings', or their equivalent in relation to its banking or financial business. . . ." 4 N.Y. Consol. Laws (McKinney, 1950) §258.

[3] " . . . a national banking association . . . shall have power . . . 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 receiving deposits. . . ." 12 U.S.C. (1946) §24. " . . . Any such association may continue hereafter as heretofore to receive time and savings deposits. . . ." 12 U.S.C. (1946) §371. (This section primarily relates to the power of national banks to make real estate loans.) See also 12 U.S.C. (1946) §§583-586.

[4] People v. Franklin National Bank of Franklin Square, 200 Misc. 557, 105 N.Y.S. (2d) 81 (1951).

[5] People v. Franklin National Bank of Franklin Square, 281 App. Div. 757, 118 N.Y.S. (2d) 210 (1953).

[6] People v. Franklin National Bank of Franklin Square, 305 N.Y. 453, 113 N.E. (2d) 796 (1953).

[7] 12 U.S.C. (1946) §24. See note 3 supra for quotation of the relevant provision.

[8] Justice Reed, dissenting, felt that inasmuch as no federal provision expressly authorizes national banks to use the word "savings" in their advertisements, the Court should not find this authority by implication and thus permit national banks to trade on the good name of the mutual savings banks.

lies in the distinction between a commercial bank and a savings bank. Unlike the former, a savings bank is a mutual association, each of its members contributing funds for the purpose of joint, restricted[9] investment.[10] The United States Supreme Court has recognized this distinction.[11] The purpose of the New York provision is to prevent misrepresentation by a bank as to the nature of its business.[12] Even though a few other states have similar statutory provisions,[13] the question has never before been raised whether this prohibition is equally applicable to national banks doing business within the state. Since *McCulloch v. Maryland*,[14] it has not been questioned that the federal government is constitutionally empowered to set up national banks and has paramount authority over the conduct of the affairs of these banks. This does not mean, however, that national banks are in no manner amenable to state laws.[15] Although it has been declared that a state regulation is applicable to national banks if it does not interfere with or impair the efficiency of the national bank in performing the functions by which it is designed to serve the national government,[16] this broad proposition is of little authoritative value in determining the issue under consideration. If the cases point to anything of significance, they would seem to indicate that the Supreme Court is not adverse to striking down state provisions which in any degree encroach upon federal law or policy.[17] In any event, the fundamental question is whether or not the state and federal provisions are in conflict. This can be resolved only by a determination of the proper implications of the federal provisions.[18] An affirmance of the decision of the New York Court of Appeals, which narrowly interpreted the applicable federal provisions, would have prohibited any national bank doing business in New York or in states having similar statutory provisions, similarly interpreted, from using the words "saving" or "savings" in the conduct of its business. Since every national bank derives its existence from a federal charter,[19]

[9] 4 N.Y. Consol. Laws (McKinney, 1950) §235.

[10] MORSE, BANKS AND BANKING, 6th ed., §3 (1928).

[11] Bank of Redemption v. Boston, 125 U.S. 60, 8 S.Ct. 772 (1888).

[12] "Our State law expresses an old, wise policy of protecting our citizens against being fooled. . . . Commercial banks, State and national, are profit-making business corporations owned by stockholders, while, in New York at least, savings banks are mutual institutions, having no stockholders but earning money for the depositors, the fundamental purpose of their existence being protection of small deposits, and their principal method of accomplishing that purpose being caution and conservatism in investments. . . ." People v. Franklin National Bank of Franklin Square, note 6 supra, at 461.

[13] See, e.g., Mass. Laws Ann. (1948) c. 167, §12; Minn. Stat. Ann (1946) §47.23; Cal. Financial Code (Deering, 1951) §3394.

[14] 4 Wheat. (17 U.S.) 316 (1819).

[15] See 7 MICHIE, BANKS AND BANKING, perm. ed., c. 15, §5 (1944).

[16] Lewis v. Fidelity & Deposit Co. of Maryland, 292 U.S. 559, 54 S.Ct. 848 (1934); Anderson National Bank v. Luckett, 321 U.S. 233, 64 S.Ct. 599 (1944).

[17] First National Bank of San Jose v. California, 262 U.S. 366, 43 S.Ct. 602 (1923); Easton v. Iowa, 188 U.S. 220, 23 S.Ct. 288 (1903); Jennings v. U.S. Fidelity & Guaranty Co., 294 U.S. 216, 55 S.Ct. 394 (1935).

[18] See note 3 supra.

[19] 12 U.S.C. (1946) §§21-40.

it is necessarily a commercial bank within the distinction contemplated by section 258 of the New York Banking Law. The Supreme Court's broad interpretation of the federal provisions relating to the powers of a national bank to receive savings deposits may in effect deprive the state provision of any significant vitality. National banks will operate independent of the restraint in competition with state commercial banks, and in addition the latter could escape the prohibitions of the statute by taking advantage of the federal provision permitting the conversion of a state bank into a national banking association.[20] If it is conceded that the purpose of subdivision 1 of section 258 of the New York Banking Law is laudable, the decision of the Supreme Court in the principal case is difficult to justify.

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[20] 12 U.S.C. (1946) §35. However, this provision requires that the state bank have an unimpaired capital sufficient for original incorporation as a national bank, and that no state law be in contravention of this conversion.