



**MONTANA
DEPARTMENT OF
ADMINISTRATION**

Division of Banking & Financial Institutions

Greg Gianforte, Governor
Misty Ann Giles, Director
Melanie Hall, Commissioner

September 20, 2022

Economic Affairs Interim Committee
PO Box 201706
Helena, MT 59620

RE: Division of Banking and Financial Institutions - State Banking Board

Dear Chair Bogner and Members of the Economic Affairs Interim Committee:

During the presentation of proposed legislation by the Division of Banking and Financial Institutions (“Banking Division”) to the Economic Affairs Interim Committee (“EAIC”) on August 16, 2022, members of the EAIC requested additional information regarding the Division’s proposal to eliminate the State Banking Board (the “Bank Board”).

The Bank Board was created by the 1973 Legislature and is codified at MCA 2-15-1025. It is given its authority in MCA 32-1-202. Its singular official duty is to approve requests for new bank charters. It is also authorized to act in an “advisory capacity” to the Banking Division in the exercise of its duties and powers.

The Division has researched the legislative history of the creation of the Bank Board. Unfortunately, the legislative history of the 1973 session regarding the Bank Board is extremely limited. However, the case of *Miners & Merchants Bank v. Dowdall* (1971), 158 Mont. 142, 489 P.2d 1274, two years earlier may provide a historical clue.

In *Miners & Merchants Bank*, the Plaintiff, a state-chartered bank in Roundup, Montana, sued the state superintendent of banks (Dowdall) to preclude him from chartering a second bank in Roundup. According to the opinion of the Court, Dowdall conducted a thorough investigation of the application for a new bank and initially denied the charter request. After the applicant submitted additional information and evidence, Dowdall issued a letter of conditional approval for the new charter.

Plaintiff, a competitor of the applicant, objected on multiple grounds, including that the superintendent could not issue a new charter based on confidential information that the Plaintiff was not given an opportunity to review or contest. The district court found that neither state nor federal law required the superintendent to conduct a formal, adversarial hearing before granting or refusing a new bank charter and that the superintendent was not required to reveal confidential information received during the course of the investigation to Plaintiffs.

The statute made clear the decision to charter a new institution was in the sole discretion of the superintendent, as long as that decision was not arbitrary or capricious. The Court specifically found that the decision was not arbitrary or

capricious. The superintendent made the decision after significant investigation of the statutory factors for chartering a new bank.

However, Chief Justice Harrison dissented from the majority opinion:

“There was a time in Montana when every hamlet had a bank and as one travels about the state now the only brick building in our many ghost towns is that of a defunct bank. Following the closure of these pioneer banks, many competing for the sparse banking business in a small community, came a period of stability and soundness in banking. One cannot help but note the many new banks that are springing up around Montana and become fearful that history may be getting ready to repeat itself. . . . To put a matter of grave concern to the economy of a community [the chartering of a new bank] into the hands of one man and permit him to deny access to the basis for his action on the ground it is confidential is, in my opinion, establishing a dangerous precedent.”

This may well have been the impetus for the 1973 legislature to create the Bank Board. However, it is important to note that many things have changed since 1973, which prevent one person from having the sole authority to determine whether to allow for a new charter. Montana law now requires banks to have FDIC insurance to operate as a bank. Any decision today to charter a new bank, would be made by the commissioner in conjunction with the FDIC based on the determination of whether the entity could qualify for FDIC insurance, its business plan, the experience of its proposed managers and directors, the need for the new services to be offered and the provision of sufficient capital to support the existence of a new banking institution.

Further, confidential information that would be provided to the division in any determination of a new charter is limited to personal biographical and background information of the applicants, managers, and directors, the proforma financial statements and the business plan of the entity and would not be the broad ranging economic and social information held confidential in *Miners & Merchants Bank*.

While the concentration of power to charter banks in one person is a legitimate concern, it is a concern that is far less relevant today than when the Bank Board was created. Current banking statutes allow the applicant the right to request an administrative hearing on the decision of the commissioner. Montana constitutional and statutory law is fully developed as to the process for determining, identifying, and litigating confidential information for an individual and an entity. And the entity would be required to have FDIC insurance which requires the FDIC to review and sign off on any proposed new entity.

Lastly, the Division appreciates the thoughtful and provocative questions from the EAIC that led to this interesting, historical inquiry. If there are any additional questions or need for further information, I can be reached at 406-841-2927 or mghall@mt.gov. Thank you.

Best Regards,



Melanie G. Hall
Commissioner
Montana Division of Banking and Financial Institutions