



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

July 27, 2005

Interpretive Letter #1054
March 2006
12 USC 24(7)

Dan C. Stevenson
Representative
Indiana House of Representatives
Third Floor State House
Indianapolis, IN 46204

Dear Representative Stevenson:

Thank you for your letter forwarding an e-mail from your constituent, [], and a letter from J. Philip Goddard, Deputy Director and Chief Counsel of the Indiana Department of Financial Institutions. Both []'s e-mail and Mr. Goddard's letter raise concerns about fees charged by a national bank for cashing a check presented for payment by a non-accountholder that is drawn upon the account of one of the bank's customers. Fees a bank charges for cashing a check presented by a non-accountholder are sometimes described as convenience fees charged for the service of making funds immediately available to non-customers.¹ The fees also are referred to as "on-us check cashing fees" or "on-us fees." I appreciate this opportunity to explain national banks' authority to charge such fees.

The OCC has issued several letters explaining that Federal law authorizes national banks to charge on-us fees.² As these letters describe, a Federal statute, 12 U.S.C. § 24(Seventh), authorizes national banks to engage in activities that are part of, or incidental to, the business of banking, as well as to engage in certain specified activities listed in the statute. Cashing checks is part of the business of banking. A national bank's authority to provide products or services, such as check cashing, to its customers encompasses the ability to charge a fee for the product or service.³ This authority to charge fees for services is expressly set forth in the OCC's regulations at 12 C.F.R. § 7.4002. After reviewing information submitted to the OCC by the banks that

¹ [], for example, explains that he has incurred these fees rather than depositing the checks in his own institution, which would place a hold of up to five days on the funds.

² OCC Interpretive Letters Nos. 932, 933, and 934 (May 2002). These letters are publicly available on the OCC's website at www.occ.treas.gov/interp/monthly.htm.

³ See *Bank of America, N.A. v. City and County of San Francisco*, 309 F.3d 551 (9th Cir. 2002), *cert. denied*, 123 S. Ct. 2220 (2003) (city ordinances prohibiting ATM fees held preempted and permanently enjoined); *Metrobank v. Foster*, 193 F. Supp. 2d 1156 (S.D. Iowa 2002) (national bank authority to charge fees for ATM use preempted Iowa prohibition on such fees). See also *Bank One v. Guttau*, 190 F.3d 844 (8th Cir. 1999) (various restrictions on the operation of ATMs imposed by Iowa law held preempted and permanently enjoined).

sought our opinion,⁴ we concluded that the on-us fees charged by each bank were authorized pursuant to this Federal statute and regulation.

That conclusion was subsequently upheld by the U.S. Court of Appeals for the Fifth Circuit. In a case concerning the applicability to national banks of a Texas statute prohibiting on-us fees, the Fifth Circuit confirmed that the OCC had the authority to determine that Federal law authorized a national bank to charge such fees and expressly upheld the OCC's determination. Moreover, the appeals court affirmed the lower court's decision that the Texas statute prohibiting on-us fees was preempted by Federal law. As the Fifth Circuit's decision thus makes clear, state statutes that prohibit the fees do not apply to national banks.⁵

Mr. Goddard's letter makes reference to a memorandum that he has prepared opining that charging an on-us fee constitutes wrongful dishonor of a check under the Indiana UCC if the payee is a holder in due course. The March 2000 Memorandum was written before the Fifth Circuit's decision, however, and provided that Indiana regulators should apply this interpretation of Indiana law "pending a resolution on the Federal level." As we note above, and as Mr. Goddard's letter to you acknowledges, Federal courts have upheld the OCC's determination that national banks may charge on-us fees, notwithstanding contrary state law. We also note that the March 2000 Memorandum's conclusion concerning the Indiana UCC is limited to financial institutions operating under a state charter. The OCC takes no position on the interpretation of the Indiana UCC that the March 2000 Memorandum sets forth for state banks.⁶

I trust this explanation is helpful in understanding national banks' authority to charge on-us fees. If you have any further questions, please do not hesitate to contact me or Michele Meyer, an attorney on my staff, at (202) 874-5090.

Sincerely,

signed

Julie L. Williams
Acting Comptroller of the Currency

⁴ The OCC requires a bank seeking an opinion about whether a particular type of fee is authorized to provide certain information that is described in the applicable regulation. *See* 12 C.F.R. § 7.4002(b). A national bank's authority to charge a particular fee is not conditioned on obtaining such an opinion, however.

⁵ *Wells Fargo Bank of Texas, N.A. v. James*, 321 F.3d 488 (5th Cir. 2003), *aff'g* 184 F. Supp. 2d 588 (W.D. Tex 2001).

⁶ As we recognized in our opinions addressing on-us fees, however, the wrongful dishonor provision in the UCC also is subject to a different interpretation than the one advanced in Mr. Goddard's memorandum. The banks requesting our opinion provided a legal analysis indicating that an on-us fee would not be considered wrongful dishonor so long as the bank's agreement with its accountholder provided for the imposition of check cashing fees. This analysis was included in the submissions made by the banks to demonstrate their consideration of any litigation risk presented by charging such fees. The OCC did not consider it for purposes of opining on the proper interpretation of the UCC. *See* OCC Interpretive Letters Nos. 932, 933, and 934.