

# Testimony on H.R. 6778 (a bill to regulate one bank holding companies)

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TESTIMONY OF SPARK M. MATSUNAGA, MEMBER OF CONGRESS FROM HAWAII  
ON H.R. 6778, A BILL TO REGULATE ONE-BANK HOLDING COMPANIES,  
BEFORE THE HOUSE COMMITTEE ON BANKING AND CURRENCY

April 22, 1969

Mr. Chairman and members of the Committee, I thank you for this privilege of expressing my views on H.R. 6778, a bill to amend the Bank Holding Company Act.

On the first day of this session of the Congress I introduced two bills which would prohibit banks from engaging in certain non-banking activities. Specifically, I refer to H.R. 271 which would prohibit banks from engaging in the travel service business, and H.R. 272 which would prohibit banks from engaging in offering professional accounting services to the public. I did this because I am deeply concerned that banks and their affiliates including bank holding companies are slowly but surely getting themselves into a position where they will have a literal stranglehold on the Nation's economy. These hearings being conducted on legislation to close the one-bank holding company loophole offers an opportunity for this Committee to devise legislation to place a clamp on the expansion of financial institutions and their subsidiaries and affiliates into non-banking activities. I am here today to urge this committee to incorporate to the extent possible the provisions of H.R. 271 and H.R. 272 in the bill it eventually will report from this committee.

There can be no doubt that this legislation is needed. Banks across the United States are offering what they call accounting services to their customers, and at least 77 banks in 28 states are presently offering some form of accounting service to the general public.

Banks began to engage in this type of activity with the advent of widespread use of automatic data processing equipment. The banks acquired more data processing capacity than could be fully utilized in their normal activities, and began to seek other outlets for their unused computer capacity. It may even be possible that the banks over-bought computer capacity with a view toward expanding into computer-oriented non-banking activities, although there is no way to make that determination.

For several years, now, banks have been offering elementary accounting systems such as "Rec-Check", "Money Minder" and similar bookkeeping services, and have in recent times graduated to more sophisticated services. A major bank in Rochester, New York (Marine Midland Trust Company of Rochester) presently advertises that it offers services as follows: Payroll system which includes generating payroll checks, year-to-date figures, quarterly and annual 941-A reports and W-2 statements, and something called a "Labor Distribution Report". The bank also offers "Accounts Receivable and Accounts Payable accounting.... After the last transmittals for a month have been prepared, ...we will: post all items to the appropriate accounts, prepare two part customer statements, prepare a monthly report, 'total sales, by salesman', a monthly report, 'total sales, by major Product Code! We prepare 4,000 Accounts Payable voucher checks, a detailed report by vendor, a check register and a monthly 'Disbursement Analysis' listing, totaling by your general ledger categories."

A California bank (United California Bank, San Gabriel office) advertises that for "a very nominal cost", it will perform the following services for a business: serve as their payroll processor, prepare and file their tax reports, prepare valuable job cost data, and eliminate their payroll processing headaches. The advertisement says that the bank specializes "in labor distribution reporting and can allocate to job, department and cost center the dollars and hours of both direct and indirect labor expenses." Among the services offered by this bank are detailed statement of earnings, deduction summary journal, and labor distribution reports, current, month-to-date, and year-to-date totals, budget comparisons.

The banks have proceeded from ordinary recordkeeping into somewhat sophisticated accounting activities which require expert personal judgment. For instance, there is a national bank in North Dakota (Citizens National Bank in Wahpeton, North Dakota) which offers what it calls electronic check keeping from their "farm accounting service". According to an advertisement in the local newspaper, this national bank offers a computerized farm accounting service which will, among other things, give a complete financial statement, a complete profit and loss statement, furnish accurate records and totals for income tax filing and will maintain a depreciation record.

While I am not an accountant, I know enough about it to know that preparing profit and loss statements and complete financial statements as well as keeping a depreciation record requires some skill and judgment

on the part of the person performing these tasks. I am not convinced that a computer programmer in a bank is qualified to make even the elementary accounting decisions which must be made in order for these statements and records to be kept in a proper manner and in a manner most appropriate and informative for the businessman.

You might ask, how does this matter of banks engaging in accounting relate to one-bank holding company legislation? As you no doubt know, regulated bank holding companies are permitted under the law to perform any function which a national bank may perform. The Comptroller of the Currency in his wisdom has decreed that the performance of accounting services of any type for the public is an activity closely related to banking and that banks should therefore be permitted to engage in this activity. If H.R. 6778 or the Administration's proposal were enacted without amendment, it would do nothing to protect the independent professional accountant who offers his services to the public. The Comptroller's decision would stand and national banks and all bank holding companies would be permitted to continue to engage in professional accounting and to expand their activities to the detriment of the independent professional accountant, and to the detriment of the public.

You are all familiar no doubt with the means by which a bank might induce a businessman to utilize its accounting services. Since small businesses are generally dependent upon local financial institutions for comparatively large amounts of credit, the bank is in a situation where it can require a prospective borrower to use the bank's accounting

services if he wishes to borrow money, and because banks are free to use their computer facilities to perform these accounting functions they may offer these services at what one bank called a "nominal cost". The accounting services might even be considered in the nature of a "loss leader" intended to induce prospective borrowers. The most disturbing thing of all this is the usurpation of the functions and judgment of the independent professional accountant.

In my bill, H.R. 272, I define professional accounting services as:

(1) the design, installation, and supervision of internal systems of recordkeeping in terms of money or internal controls of financial data;

(2) the use of discretion in recording business transactions of a financial nature.

(3) the preparation of financial statements from books of account;

(4) the preparation of income tax returns, whether Federal, State, or local; or

(5) the conduct of audits and the preparation of reports based on audits.

Under H.R. 272, all national banks and banks operating under the laws of the District of Columbia, banks which are members of the Federal Reserve System, banks whose deposits are insured by the Federal Deposit Insurance Corporation, and federal savings and loan associations and all other insured members of the Federal Savings and Loan Insurance Corporation would be prohibited from performing the functions designated above.

One of the services rendered by a trained accountant is design and installation of an accounting system for a client. The accountant studies the nature of the business, determines the types of transactions that will probably occur and plans or selects the necessary forms or records in which the transactions of the business may be recorded. He would be using professional discretion in recording business transactions of a financial nature as soon as he left the realm of recording a business transaction as a mechanical function in a routine manner in accordance with established procedures, and begins to make decisions about a particular accounting procedure or entry. The exercise of discretion in accounting involves decisions as to which recording to make, when, in what amount, and to what accounts. These decisions are best left to a professional qualified accountant. They should not be made by a bank or by a computer programmer who is not professionally trained for this type of service.

While it is good business practice to have a dependable recordkeeping system, it is also necessary from time to time for a businessman to have his records analyzed to see what is really happening in his business. Such analyses are generally referred to as financial statements and include such familiar items as balance sheets and profit and loss statement. The preparation of these statements requires skill and judgment on the part of a trained accountant familiar with the operations of the business. The independent professional accountant has the training and experience necessary to prepare properly the kind of financial evaluation a businessman should have. Banks should not be permitted to offer to prepare financial statements from books of account.

The conduct of an audit, too, is most assuredly not within the province of any bank. Auditing is a procedure by which experts examine accounting records and statements as a safeguard against fraud and error, and provide assurance that the records and statements have been prepared in accordance with accepted accounting principles. In order to be perfectly fair and accurate, the accountant performing the audit must be independent of any substantial financial interest in the firm. If a bank has been extending credit to a firm, it can hardly be considered independent when performing an audit. Of course, nothing in my bill would preclude a bank from having its own accountants perform what is known as an internal audit which is a continuous check of work performed by one's own bookkeeping or accounting department.

Auditing and the rendition of professional opinions are considered to be in the highest level of public accounting practice. Considerable training and experience are required. Certainly no bank should be allowed to perform audits for the public.

My bill would also prohibit banks from the preparation of income tax returns, whether federal, state or local. I personally consider the preparation of income tax returns as an extension of the accounting function. Accounting records and accounting principles are a foundation upon which income tax returns are based. On March 19, 1969 I commented on this matter in a floor speech. At that time I called the attention of the House of Representatives to an activity of the First National City Bank of New York. The First National City Bank had begun a service whereby it offered to prepare tax returns for

the public for a fee. Rather than prepare the returns itself the Bank would simply take down the data it deemed necessary and send them to another firm which would <sup>then</sup> prepare the return on a computer. I refer the Committee to the entire text of my comments which appeared in the Record of March 19, 1969, on page H1912.

It is true that no federal or state regulation would preclude anyone from preparing tax returns for a fee. Nevertheless, under Treasury regulations the bank would be what is known as an unenrolled preparer of tax returns. As such, it would be subject to Revenue Procedure No. 68-20 which provides that an unenrolled preparer who advertises or solicits may not represent a taxpayer whose return is audited. It would certainly be to the benefit of the taxpayer if he were to have his returns prepared by a trained practitioner who could properly represent him, rather than by an organization which is barred from doing so.

I urge the committee to amend H.R. 6778 to include specific language prohibiting banks from engaging in accounting services. Recent experience with the Comptroller of the Currency has made it crystal clear that one cannot give administrative agencies generalized guide-lines and expect that the agencies will follow the law as set down by Congress.

Recent court cases including Arnold Tours, Inc., vs. William B. Camp, USCA, First Circuit, #7192, and Association of Data Processing Service Organization <sup>Inc.</sup> vs. William B. Camp, USCA, 8th Circuit, #19218 make it clear that in the absence of a specific legislative prohibition

one aggrieved by an administrative decision has no standing in a court to challenge the propriety of the administrative decision. In his decision in the Arnold Tours case, First District Chief Judge Aldrich said, "Congress now knows that if it wishes a particular class of plaintiffs to have, or not to have, standing to seek review of agency rulings, it may make, or not make, the types of legislative provisions discussed earlier in this opinion, and that is an end to the matter."

Judge Aldrich further stated in the case of The Wingate Corporation vs Industrial National Bank, (USCA, First Circuit, #7186) that Congress had acted to give standing to those who performed data processing services for hire. It cited the 1962 Bank Service Corporation Act (73 Stat 1132) which allowed small banks to combine to form a separate corporation which could own data processing equipment. According to the opinion, "In order to prevent such corporations being used as a subterfuge for entering into the nonbanking business of data processing, and to protect the interests of certified public accounting firms, Congress provided in Section 4 of that Act (12 U.S.C., 1864) that 'No bank service corporation may engage in any activity other than the performance of bank services for banks.' The legislative history is clear. The prohibition was initially proposed in an amendment requested by the National Society of Public Accountants, which objected to the original version of the bill which would have allowed bank service corporations to solicit outside business. The accountants feared the threat against <sup>their</sup> business posed by the corporation's computers.

The final provision was an obvious legislative response. (See 108 Cong. Rec. 16499, 22031 (1962); Hearings on Misc. Bank Bills Before the Comm. on Banking and Currency of the United States Senate, 87th Cong, 2nd Sess., at 79-80 (1962))."

According to the decision in the Wingate case, and according to the legislative history cited therein, Congress has previously considered the matter of banks offering computerized accounting service, when it passed the Bank Service Corporation Act of 1962. At that time Congress very wisely decided to let banks stick to banking. Unfortunately, the Bank Service Corporation Act places no similar restrictions on the banks/or on bank-holding companies themselves. I respectfully urge therefore that the committee give favorable consideration to amending H.R. 6778 to provide for a prohibition against banks engaging in the professional accounting services enumerated in H.R. 272. Certainly, if the bank service corporations are prohibited from providing this service, the banks themselves ought to be likewise prohibited. Let us keep banks in the banking business.

Thank you.

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