



Department of Banking and Finance

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Sonny Perdue
Governor

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Commissioner

Declaratory Ruling

TO: All Georgia State Chartered Banks

FROM: Robert M. Braswell, Commissioner

DATE: August 3, 2007

SUBJECT: Effect of Preemption of O.C.G.A. §§ 7-1-239.5 & 7-1-372

O.C.G.A. § 7-1-372 provides in pertinent part that “A commercial bank shall pay all checks drawn on it at par and shall make no charge for the payment of such checks...” Similarly, O.C.G.A. § 7-1-239.5 provides that:

“No financial institution, savings bank, national bank, or state or federal credit union or savings and loan association may charge any fee of any kind to a person or corporation who does not have an account with that institution for cashing a check or other instrument which is payable to such person or corporation and is drawn on the account of another person or corporation with that institution.”

Quite simply, the “on us” state statutes referenced above prevent a financial institution located in Georgia from charging a fee to a non-account holder for cashing a check drawn on that financial institution.

In considering the matter as to whether the “on us” statutes are applicable to national banks, the United States District Court for the Northern District of Georgia concluded that “the Georgia statutes are in direct conflict with the National Bank Act, and therefore are preempted.” Bank of America v. Sorrell, 248 F.Supp.2d 1196, 1199 (N.D. GA. 2002). The Office of the Comptroller of the Currency (OCC) filed a friend of the court brief in the Bank of America case which included the opinion that the Georgia statutes at issue prohibiting banks from charging non-account holders check cashing fees were preempted under the Supremacy Clause of the United States Constitution as being in direct conflict with The National Bank Act.

The Department of Banking and Finance (Department) has received several requests from industry groups as well as individual attorneys representing specific banks asking the Department to exercise its discretionary authority under O.C.G.A. § 7-1-61(e) to issue an order that would afford state-chartered banks the ability to charge check cashing fees to non-account holders to ensure parity with national banks operating in the State of Georgia.

The Department has reviewed these requests and has consulted with its counsel, the office of the State Attorney General, on its effect.

We conclude that federal law has been determined by a United States District Court sitting in Georgia to preempt the applicability of the above referenced “on us” state statutes for national banks. It is noted that the “on us” state statutes apply to all state-chartered financial institutions, including savings banks, national banks, state and federal credit unions or savings and loan associations. The District Court’s decision in Bank of America only analyzed the national Bank Act and therefore, the preemption finding was limited to national banks.

O.C.G.A. § 7-1-61(e)(5) provides in pertinent part that:

(e) To provide parity with other federally insured financial institutions, the commissioner may, by specific order directed to an individual financial institution or category of financial institutions, modify or amend the following qualifying or limiting requirements imposed on financial institutions by this chapter. . .

(5) If Georgia law has been determined to be federally preempted, other limitations or restrictions on financial institutions contained in this chapter.

In addition to specific requirements contained in the section, prior to exercising this discretionary power found at O.C.G.A. § 7-1-61(e)(5), the Commissioner must consider the following four factors found in O.C.G.A. § 7-1-61(b):

(b) In the exercise of discretion permitted by this Code section, the commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of any federally chartered bank, as the term “bank” is defined in Code Section 7-1-21, operating pursuant to federal law, regulation, or authoritative pronouncement;

(3) The powers of other entities providing financial services in this state; and

(4) Any specific limitations on financial institution operations or powers contained in this chapter . . .

Therefore, based upon the authority found at O.C.G.A. § 7-1-61(e)(5), after confirming that all required factors have been analyzed and considered, the “on us” state statutes shall not apply to state-chartered banks. This will afford state-chartered banks the ability to charge check cashing fees to non-account holders to ensure parity with national banks operating in the State of Georgia.

State chartered banks are cautioned, however, that should any part of the federal preemption determined by Federal Court Ruling or by Order of the applicable Federal Agency be overturned, clarified, or revised, then state chartered banks will be subject to those provisions to which other federally insured institutions are subject.

The effective date of the preemption for state chartered banks shall be August 3, 2007.

Questions about this preemption should be directed to Judy Newberry, Deputy Commissioner of Legal and Consumer Affairs (770-986-1650).